

Committee Room.

Austin, Texas, Sept. 18, 1917.

Hon. W. L. Dean, President Pro Tem. of the Senate.

Sir: Your committee on Engrossed Bills has had Senate Bill No. 6 carefully compared, and finds the same correctly engrossed.

ALDERDICE, Chairman.

Committee Reports.

Committee Room.

Austin, Texas, Sept. 18, 1917.

Hon. W. L. Dean, President Pro Tem. of the Senate.

Sir: Your Committee on Education, to whom was referred

House Bill No. 17, the same being an Act to establish the Anahuac Independent School District in Chambers County, Texas,

Have had the same under consideration and I am instructed to report the same back with the recommendation that it do pass and be not printed.

BEE, Chairman.

(Floor Report.)

Senate Chamber,

Austin, Texas, Sept. 18, 1917.

Hon. W. L. Dean, President Pro Tem. of the Senate.

Sir: Your Committee on Roads, Bridges and Ferries, to whom was referred

H. B. No. 10, A bill to be entitled "An Act to amend the special road law for Cass County,"

Have had the same under consideration, and beg leave to report the same back to the Senate with the recommendation that it do pass and be not printed.

Caldwell, Chairman; Floyd, Smith, Clark, Buchanan of Scurry, Gibson, Strickland.

(Floor Report.)

Senate Chamber,

Austin, Texas, Sept. 18, 1917.

Hon. W. L. Dean, President Pro Tem. of the Senate.

Sir: We your Committee on County Boundaries, to whom was referred

S. B. No. 26, A bill to be

entitled "An Act to authorize the Commissioners Court of Brewster County, State of Texas, by a majority vote to issue scrip payable from one to twenty years from date, bearing interest at the rate of not to exceed six per cent; for the purpose of taking up the present indebtedness of the county incurred for the building of roads and bridges in said county; providing that the yearly net revenue, less the necessary sinking fund to cover said scrip issue, may be used by the commissioners' court of said county in repairing and building roads and bridges, and declaring an emergency,"

Have had the same under consideration, and I am instructed to report the same back to the Senate with the recommendation that it do pass and be not printed.

Parr, Chairman; Johnston of Harris, Smith.

FOURTEENTH DAY.

Senate Chamber,

Austin, Texas,

Wednesday, Sept. 19, 1917.

The Senate met at 9:30 o'clock a. m. pursuant to adjournment, and was called to order by President Pro Tem. Dean.

By unanimous consent, and on request of Senator Johnson of Hall the Senate stood at ease for fifteen minutes, at the expiration of which time the roll was called, a quorum being present, the following Senators answering to their names:

| | |
|---------------------|---------------------|
| Alderdice. | Hopkins. |
| Bailey. | Hudspeth. |
| Bee. | Johnson of Hall. |
| Buchanan of Bell. | Johnston of Harris. |
| Buchanan of Scurry. | Lattimore. |
| Caldwell. | McNealus. |
| Clark. | Page. |
| Collins. | Parr. |
| Dean. | Robbins. |
| Decherd. | Smith. |
| Floyd. | Strickland. |
| Gibson. | Suiter. |
| Hall. | Westbrook. |
| Harley. | Woodward. |
| Henderson. | |

Absent—Excused.

Dayton.

McCollum.

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday the same was dispensed with on motion of Senator Alderdice.

Petitions and Memorials.

There were none today.

Committee Reports.

See Appendix.

Morning call concluded.

House Bill No. 5.

The Chair laid before the Senate on second reading:

H. B. No. 5, A bill to be entitled "An Act to amend Chapter 105 of the Acts of the Regular Session of the Twenty-ninth Legislature, which Chapter is entitled 'An Act to prevent the diversion of electric current, water or gas, from passing through any meter, and prevent any electric, water or gas meter by any manner or means from registering the full amount of current of electricity, water or gas, that passes through it, and to prevent the diversion from any wire or electric current, water or gas, of any person, corporation, or company engaged in the manufacture or distribution of electricity, water or gas, for lighting, power or other purposes; and to prevent the retaining of, or refusing to deliver any meters, lamps or other appliances which may have been loaned or supplied for furnishing electricity, water or gas; and to prescribe a penalty for the violation thereof; so amending said Chapter as to make the presence on or about such meters, wires and pipes, of any device for the diversion of electric current, water or gas, or for the prevention of the proper action, or registration of the meter prima facie evidence of intention on the part of the user to defraud, within the scope of such Chapter and so amending said Act as to effect more fully the purpose thereof, and to repeal all laws in conflict herewith."

The bill was laid before the Senate and on motion of Senator Bee the same was passed to its third reading.

House Bill No. 10.

The Chair laid before the Senate on second reading:

H. B. No. 10, A bill to be entitled "An Act to amend the special road law of Cass County, Texas, enacted by the Regular Session of the Thirty-fifth Legislature, 1917, which became effective June 2, 1917, same being an Act to create a more efficient road law for Cass County; making the county commissioners ex officio road supervisors, defining their duties and fixing their salaries; 'An Act to create a more efficient road system for Cass County, Texas, and defining the powers and duties of the commissioners' court of said county relative to roads and bridges of said county, and making county commissioners of said county ex officio road supervisors of their respective districts, etc., and declaring an emergency.'"

The committee report that the bill be not printed was adopted.

The bill was read second time and passed to its third reading.

On motion of Senator Henderson, the constitutional rule requiring bills to be read on three several days was suspended and House Bill No. 10 put on its third reading and final passage by the following vote:

Yeas—24.

| | |
|---------------------|--------------------|
| Alderdice. | Harley. |
| Bailey. | Henderson. |
| Bee. | Hopkins. |
| Buchanan of Bell. | Hudspeth. |
| Buchanan of Scurry. | Johnson of Hall. |
| Caldwell. | Johnston of Harris |
| Clark. | Lattimore. |
| Collins. | Robbins. |
| Dean. | Smith. |
| Decherd. | Strickland. |
| Floyd. | Suiter. |
| Hall. | Woodward. |

Absent.

| | |
|-----------|------------|
| McNealus. | Parr. |
| Page. | Westbrook. |

Absent—Excused.

| | |
|---------|-----------|
| Dayton. | McCollum. |
| Gibson. | |

The bill was laid before the Senate, read third time and, on motion of Senator Henderson, was passed by the following vote:

Yeas—25.

| | |
|---------------------|---------------------|
| Alderdice. | Henderson. |
| Bailey. | Hopkins. |
| Bee. | Hudspeth. |
| Buchanan of Bell. | Johnson of Hall. |
| Buchanan of Scurry. | Johnston of Harris. |
| Caldwell. | Lattimore. |
| Clark. | Robbins. |
| Collins. | Smith. |
| Dean. | Strickland. |
| Decherd. | Sulter. |
| Floyd. | Westbrook. |
| Hall. | Woodward. |
| Harley. | |

Absent.

| | |
|-----------|-------|
| McNealus. | Parr. |
| Page. | |

Absent—Excused.

| | |
|---------|-----------|
| Dayton. | McCollum. |
| Gibson. | |

The Senate as Court of Impeachment.

PROCEEDINGS.

Wednesday, September 19, 1917.

Morning Session.

Senate Chamber, Austin, Texas.

(Pursuant to adjournment, the Senate sitting as a High Court of Impeachment, reconvened at 10:00 o'clock a. m.)

Hon. W. L. Dean, President Pro Tempore, presiding.

The Board of Managers and their Counsel were present.

The Respondent and his Counsel were present.

The Chair: The hour having arrived for the convening of the Court of Impeachment, the Sergeant-at-Arms will proclaim the convening of the Court.

Sergeant-at-Arms (at the door of the Senate): Oyez! Oyez! Oyez! the Senate sitting as a High Court of Impeachment is now in session.

The Chair: I would like to have the attention of the Sergeant-at-Arms and his assistants, as well as the attention of the members of this Court, and the employes of this Senate. We have prescribed a certain area as the Bar for this trial. Several of the Senators have complained to the Chair that the employes of the Senate, as well as visitors, have been permitted to sit within the Bar, and have continued to do it. The Chair

very much hopes that none of the stenographers or pages will ever sit while the Court is in session within the Bar of the Senate, and the Chair further hopes that no member of the Court will invite his friends or guests to sit within the Bar. Let us observe that rule, now, and all those who are here, either members of the Court, officers, employes of the Senate, or guests, let us observe the strictest order during the progress of this trial.

Senator Bailey: Mr. President.

The Chair: The Senator from De Witt.

Senator Bailey: What is the Bar of the Senate—these first two seats?

The Chair: No, sir, it goes beyond your seat there and on out. And we want that rule enforced, it is necessary to enforce that rule, because if we relax it as to one or more, then we cannot enforce it as to the others.

Senator Lattimore: Mr. President.

The Chair: The Senator from Tarrant.

Senator Lattimore: I would be glad for the Chair to announce what is the Bar of the Senate. I asked the Sergeant-at-Arms yesterday and he said the Bar of the Senate was out three desks on this side and three desks on the other.

The Chair: Well, it is three desks on each side, as the Chair prescribed. The Sergeant-at-Arms does not seem to have understood that, but it is three desks on each side, and stopping at the second desk in front there.

Senator Johnson of Hall: Mr. President, inasmuch as there are only two desks on the outer row, there would only be two desks on that side, I take it.

The Chair: Well, it is one desk left free on the outer row, that is all that is left free.

Senator Lattimore: Is the desk of the Senator from DeWitt within the Bar of the Senate?

The Chair: Yes, sir, the desk of the Senator from DeWitt is within the Bar of the Senate.

Senator Bailey: Then outside of this aisle is not in the Bar?

The Chair: No, sir, and the Chair would impress on the members of the Court not to have the stenographers sit with them unless it is absolutely necessary to do so, and then only while they are actually engaged

in taking dictation or instructions. And you gentlemen of the press, two of the reporters have complained that there was noise in that vicinity that interfered with their taking dictation; I know that the only thing that is necessary to say in that connection is to remind you. Proceed, General.

Thereupon, the Respondent

JAMES E. FERGUSON,

resumed the witness stand, and in answer to questions propounded, further testified as follows, to wit:

Cross Examination

Continued by General Crane.

Q. Governor, on yesterday at adjournment, we had been discussing the practices of the Secretary of State and other State officers in not depositing the money in the State Treasury, but in depositing it in the banks, and particularly the—

Senator Bee: Mr. President, let us have order, please, I cannot hear the question.

The Chair: Mr. Sergeant-at-Arms!

Sergeant-at-Arms: Let us have order, please.

The Chair: All right. Proceed.

Q. Let me begin that over again. Before adjournment yesterday, we were discussing the practice that had grown up, inaugurated during your administration, of depositing money, particularly the charter fees and franchise fees collected by the Secretary of State, only every ninety days in the State Treasury. I will ask you whether your attention has been called to Section 23, Article 4, of the State Constitution found on page 25 of the Legislative Manual, which is in these words (reading):

"The Comptroller of Public Accounts, the Treasurer and the Commissioner of the General Land Office shall each hold office for the term of two years, and until his successor is qualified; receive an annual salary of \$2,500, and no more; reside at the Capital of the State during his continuance in office, and perform such duties as are or may be required of him by law. They, and the Secretary of State shall not receive to their own use any fees or perquisites of office. All fees that may be payable by law for any service performed by any officer specified in this section, or in his office, shall be paid, when

received, in the State Treasury?"

A. No, sir, I have not.

Q. You had not had your attention called to that?

A. No, sir.

Q. You recognize the fact that if a statute and a section of the Constitution shall conflict, the Constitution prevails, do you not?

A. Yes, sir.

Q. Was your attention never called, and did you never look into it, in passing upon the question, the Act of the Texas Legislature of 1883, defining and providing the charges for filing capital—or charters of corporations, etc., and that Section 2 of that Act reads as follows (reading): "All fees mentioned in this Act shall be paid in advance into the office of the Secretary of State, and shall be by him paid into the State Treasury monthly?"

Mr. Hanger: What is the act?

General Crane: Act of 1883, page 72.

A. No, sir, I never.

Mr. Hanger: What chapter?

General Crane: Chapter 73.

Mr. Hanger: Acts of 1883?

Q. The entire act preceding that, the first section I will read (reading):

"Be it enacted by the Legislature of the State of Texas, that the Department of State shall charge and collect, for the use and benefit of the State, for services rendered in said department, the following fees, to wit: For each and every charter, amendment or supplement thereto of a private corporation created for the purpose of operating or constructing a railroad, magnetic telegraph line, or street railway, or express company, authorized or required by law to be recorded in said department, a fee of \$100, to be paid when said charter is filed; provided, that if the authorized capital of said corporation shall exceed \$100,000, it shall be required to pay an additional fee of \$25.00 for each \$100,000 authorized capital stock, or fractional part thereof, after the first; for each and every charter, amendment, or supplement thereto, of a private corporation intended for the support of public worship, any benevolent, charitable, educational, missionary, literary or scientific undertaking, the maintenance of a library, the promotion of painting, music, or other fine arts, the encouragement of agricul-

ture and horticulture, the maintenance of public parks, and facilities for skating and other innocent sports, the maintenance of a public cemetery, a fee of \$10.00 to be paid when the charter is filed; for each and every charter, amendment, or supplement thereto, of a private corporation, created for any other purpose, intended for mutual profit or benefit, a fee of \$25.00 shall be paid when the said charter is filed for record; provided, that if the authorized capital stock of said corporation shall exceed \$10,000, it shall be required to pay an additional fee of \$5.00 for each additional \$10,000 of its authorized capital stock, or fractional part thereof, after the first; for each commission to every officer, elected or appointed in this State, a fee of \$1.00; and each and every officer elected or appointed in this State is required to apply for and receive his commission; provided, that the Secretary of State shall not be required to forward copies of laws to, nor attest the authority of, any officer in this State who fails and refuses to take out his commission as required in this Act; for every official certificate, a fee of \$1.00; for each warrant or requisition, a fee of \$2.00; for each remission of fine or forfeiture, \$1.00; for copies of any paper, document or record in his office, for each 100 words, 15 cents.

"Section 2. All fees mentioned in this Act shall be paid in advance into the office of the Secretary of State and shall be by him paid into the State Treasury monthly."

Q. You say you are not familiar with that?

A. No, sir.

Q. Then, are you familiar with the fact that in 1909 the Legislature sought to revise and amend those laws and somewhat enlarged them in reference to corporations and franchise taxes, the Act beginning on page 266?

Mr. Hanger: That is '99, did you say the year 1899, General?

General Crane: No.

Mr. Hanger: I didn't understand you?

General Crane: 1909.

Mr. Hanger: Oh, I beg your pardon.

Q. Which Act of the Legislature, so far as applicable, reads as follows—after the enacting clause amending Article 2439, etc., 2439 as amended, reads as follows (reading):

"The Secretary of State, besides other fees that may be prescribed by law, is authorized and required to charge for the use of the State the following fees: For each and every charter, amendment, or supplement thereto, of a private corporation created for the purpose of operating or constructing a railroad, magnetic telegraph line or street railway, or express company authorized or required by law to be recorded in said department, a fee of \$200, to be paid when said charter is filed; provided, that if the authorized capital stock of said corporation shall exceed \$100,000 it shall be required to pay an additional fee of 50 cents for each \$1,000 authorized capital stock, or fractional part thereof, after the first."

Now, it fixes the fee for,—

"Each and every charter, amendment, or supplement thereto, of a private corporation intended for the support of public worship, any benevolent, charitable, educational, missionary, literary or scientific undertaking, the maintenance of a library, the promotion of painting, music or other fine arts, the encouragement of agriculture or horticulture, the maintenance of public parks, the maintenance of a public cemetery not for profit, a fee of \$10.00, to be paid when the charter is filed. For each and every charter, amendment, or supplement thereto, of a private corporation created for any other purpose, intended for mutual profit or benefit, a fee of \$50.00 shall be paid when said charter is filed; provided, that if the authorized capital stock of said corporation shall exceed \$10,000, it shall be required to pay an additional fee of \$10.00 for each additional \$10,000 of its authorized capital stock, or fractional part thereof, after the first. For each commission to every officer elected or appointed within this State, a fee of \$1.00; and each and every State, district, county and precinct officer elected or appointed in this State is required to apply for and receive his commission; provided, that the Secretary of State shall not be required to forward copies of laws to nor attest the authority of any officer in this State who fails or refuses to take out his commission, as required herein. For each official certificate, a fee of \$1.00. For each warrant of requisition a fee of \$2.00; for every remission of

fine or forfeiture, \$1.00. For copies of any paper, document, or record, in his office, for each 100 words, 15 cents. For each and every charter, amendment, or supplement thereto, taken out under Chapter 14, Title 21, Revised Statutes of 1895 (Channel and Dock Corporations), a fee of \$200 shall be paid to the Secretary of State, for the use and benefit of the State, which shall be paid when the charter, amendment or supplement thereto is filed for record. For each foreign corporation obtaining permit to do business in this State shall pay fees as follows: \$50 for the first \$10,000 of its authorized capital stock; and \$10 for each additional \$10,000, or fractional part thereof; provided, that the fee required to be paid by any foreign corporation for a permit to engage in the manufacture, sale, rental, lease or operation of all kinds of cars, or to engage in conducting, operating or managing any telegraph lines in this State, shall in no event exceed \$10,000; provided, however, that mutual building and loan companies, so-called, whose stock is not permanent, but withdrawable, shall pay a fee of \$50 for the first \$100,000, or a fractional part thereof, of its authorized capital stock; \$10 for each additional \$100,000, or fractional part thereof; and where the company is a foreign one, then the fee shall be based upon the capital invested in the State of Texas; and it shall be the duty of the Secretary of State to require satisfactory proof as to the amount of capital actually invested in the State before issuing any permit to any foreign building and loan company to do business in the State; provided, that the minimum fee for any foreign building and loan company shall be \$250; provided, further, that the fee required to be paid by any foreign corporation for a permit to do the business of loaning money in this State, shall in no event exceed \$1,000; provided, further, that nothing in this Act shall in any wise affect any suit now pending in the name, or in behalf of the State of Texas, as against any foreign corporation."

Section—no, the same section, that is not numbered, at any rate (reading):

"The fees mentioned in this article shall be paid in advance into the office of the Secretary of State,

and shall be by him paid into the State Treasury monthly."

Q. You were not familiar with that, either, in 1909?

A. No, sir, I never read that law.

Q. Now, Governor, didn't you know that that same Act of 1909, and the Act of 1883, and the intervening Act, were copied into the Revised Statutes of the State of Texas, and became Articles 3836, 3837 and 3838 of the Revised Statutes?

A. What are those two articles?

Q. These two say, first, 3837, "For each and every charter, amendment, or supplement thereto, of a private corporation created for the purpose of operating or constructing a railroad, magnetic telegraph line or street railway, or express company," etc., shall be charged so much—I will read it to show that it is almost identical in language (reading):

"The Secretary of State, besides other fees that may be prescribed by law, is authorized and required to charge for the use of the State the following fees: For each and every charter, amendment, or supplement thereto, of a private corporation created for the purpose of operating or constructing a railroad, magnetic telegraph line or street railway, or express company, authorized or required by law to be recorded in said department, a fee of \$200 to be paid when said charter is filed; provided, that if the authorized capital stock of said corporation shall exceed \$100,000, it shall be required to pay an additional fee of 50 cents for each \$1,000 authorized capital stock, or fractional part thereof, after the first."

General Crane: Mr. Secretary—is he here?

The Chair: Mr. Secretary?

Mr. Manager Bledsoe: There is his assistant.

General Crane: All right. Will you read from here down here, please, and then on? I find I will have to save my voice just a little bit. I will stand over here right by you.

The Secretary: Where do you want me to start?

General Crane: Where I left off, over here, please (indicating), "For each and every charter, amendment," etc.

"For each and every charter, amendment, or supplement thereto,

of a private corporation intended for the support of public worship, any benevolent, charitable, educational, missionary, literary or scientific undertaking, the maintenance of a library, the promotion of painting, music or other fine arts, the encouragement of agriculture, horticulture, the maintenance of public parks, the maintenance of a public cemetery not for profit, a fee of \$10 to be paid when the charter is filed.

"For each and every charter, amendment, or supplement thereto, of a private corporation for any other purpose, intended for mutual profit or benefit, a fee of \$50 shall be paid when said charter is filed; provided, that if the authorized capital stock of said corporation shall exceed \$10,000, it shall be required to pay an additional fee of \$10 for each additional \$10,000 of its authorized capital stock, or fractional part thereof, after the first.

"For each commission to every officer elected or appointed in this State, a fee of one dollar; and each and every State, district, county and precinct officer elected or appointed in this State is required to apply for and receive his commission; provided, that the Secretary of State shall not be required to forward copies of laws to nor attest the authority of any officer in this State who fails or refuses to take out his commission as required herein.

"For each official certificate, a fee of one dollar.

"For each warrant of requisition, a fee of two dollars.

"For every remission of fine or forfeiture, one dollar.

"For copies of any paper, document or record in his office, for each one hundred words, fifteen cents.

"For each and every charter, amendment or supplement thereto, taken out under Chapter 16, Title 25, Revised Statutes (channel and dock corporation), a fee of \$200 shall be paid to the Secretary of State for the use and benefit of the State, which shall be paid when the charter, amendment or supplement thereto is filed for record.

"For each foreign corporation obtaining permit to do business in this State shall pay fees as follows: \$50 for the first \$10,000 of its authorized capital stock, and \$10 for each additional \$10,000, or fractional part thereof; provided, that

the fee required to be paid by any foreign corporation for a permit to engage in the manufacture, sale, rental, lease or operation of all kinds of cars, or to engage in conducting, operating or managing any telegraph lines in this State, shall in no event exceed \$10,000; provided, however, that mutual building and loan companies, so-called, whose stock is not permanent, but withdrawable, shall pay a fee of \$50 for the first \$100,000, or a fractional part thereof, of its authorized capital stock, and \$10 for each additional \$100,000, or a fractional part thereof; and where the company is a foreign one, then the fee shall be based upon the capital invested in the State of Texas."

General Crane: Now, read Article thirty-eight—I will read this myself, Article 3838 (reading):

"The minimum fee for any foreign building and loan company shall be \$250; provided, further, that the fee required to be paid by any foreign corporation for a permit to do the business of loaning money in this State shall in no event exceed \$1,000."

Article 3839 (reading):

"Nothing in this chapter, nor in Articles 1315 and 1316 shall in any wise effect any suit now pending in the name, or in behalf of the State of Texas, as against any foreign corporation."

Article 3840 (reading):

"Fees paid in advance to the Secretary: All fees mentioned in Articles 3837 and 3838 shall be paid in advance into the office of the Secretary of State, and shall be by him paid into the State Treasury monthly."

Q. Now, Governor, from the reading of that, you recognize that the Acts of 1883, 1907 and the Revised Statutes into which they were copied, are practically one and the same, don't you?

A. I think I may have misunderstood the reading of that statute. The articles prescribing fees there, as I heard him read it here, does not include franchise tax.

Q. Why, it includes the filing of corporation charters and charges for permitting foreign corporations to do business, doesn't it?

A. Yes, sir, and I understand all those fees have been paid by the

Secretary of State monthly into the Treasury.

Q. All of them?

A. Yes, sir.

Q. All the fees for corporations?

A. Well, all fees other than franchise taxes I have understood have been paid monthly.

Q. Well, now, hold on, let's see now, let's not quibble about words. (Reading.): "For each foreign corporation obtaining a permit to do business in the State, shall pay fees as follows: \$50 for the first \$10,000 of its authorized capital stock, and \$10 for each additional \$10,000, or fractional part thereof; provided, that the fee required to be paid by any foreign corporation for a permit to engage in the manufacture, sale, rental, lease or operation of all kinds of cars, or to engage in conducting, operating or managing any telegraph lines in this State, shall in no event exceed \$10,000; provided, however, that mutual building and loan companies, so-called, whose stock is not permanent, but withdrawable, shall pay a fee of \$50 for the first \$100,000, or fractional part thereof, of its authorized capital stock, and \$10 for each additional \$100,000, or fractional part thereof." Now, for permits to do business in the State, that is the only law authorizing it, isn't it?

A. That is charter fees.

Q. Charter fees? All right. Well, now suppose—then, suppose that is another fee, let's take that view of it for the time being; then let us turn back to Section 23 of Article 4 of the Constitution, which says, "That all fees that may be payable by law for any service performed by any officer specified in this section,"—among which is the Secretary of State—

A. Who are the officers mentioned in this connection?

Q. The Comptroller of Public Accounts, Treasurer, Commissioner of the General Land Office—I will read it to you again (reading):

"Shall each hold office for the term of two years, and until his successor is qualified, receive an annual salary of \$2500, and no more; reside at the Capital of the State during his continuance in office, and perform such duties as are or may be required of him by law. They and the Secretary of State shall not receive to their own use any fees, costs, or perqui-

sites of office. All fees that may be payable by law for any service performed by any officer specified in this section, or in his office, shall be paid, when received, into the State Treasury."

A. Well, my attention was not called to that Constitution—that provision of the Constitution; but if anybody else paid any attention to that here in Austin—

Q. Well, then, your idea is that you are ignorant of the law—of what the Constitution says, that is the answer you make to that proposition, is it, Governor?

A. Well, if you want to put "ignorance," why, I guess I am simply ignorant of that provision.

Q. Of that provision of the law?

A. And the Attorney General, and everybody else.

Q. Well, that is in a legal sense—I don't put it in offensive sense, but in the sense of ignorance of the law, you understand, that is a legal maxim—don't you?

A. Yes, sir. And if I am ignorant, why, all the other officers here in Austin are ignorant—

Q. Yes—

A. —too, about that section of that constitutional provision.

Q. Yes. Passing from that for a moment, so as not to delay by waiting (making efforts to locate a book), I will now call your attention again to the banking laws of the State. You said they were simply directory, if I understood you correctly?

A. I understood that the loan limit law that you are talking about.

Q. Yes.

A. —did not have any penalty attached to it.

Q. Did not have any penalty attached to it? And your definition of a directory statute is not one of procedure, that may be dispensed with, or not, but a directory statute is one that has no penalty affixed to it?

A. As I understand—

Q. Now, let's see, Article—Section 89 is the one that fixes the loan limit. It, among other things, reads as follows (reading):

"No incorporated bank or trust company, chartered under the laws of this State, shall loan its money to any individual, corporation, company or firm, directly or indirectly, or permit or"—

Yes, directly or indirectly—let me read that over again. I have got it mixed (reading):

"No incorporated bank or trust company, chartered under the laws of this State, shall loan its money, to any individual, corporation, company or firm, directly or indirectly, or permit any individual, corporation, company or firm, to become at any time, indebted or liable to it in a sum exceeding twenty-five per cent of its capital stock actually paid in, or permit a line of loans or credits to any greater amount to any individual, corporation, company, or firm; all loans to the members of any unincorporated company or firm shall be considered as if they were loans to such company or firm in determining the limitation here prescribed," etc.

Q. Now, you think there is no penalty attached to that? There is a prohibition there that the banks shall not lend that money, isn't there?

A. Yes, sir.

Q. In excess? Now, you recognize, as the Governor of the State, in enforcing the banking laws, that any officer—Section 376 of that (reading): "Any officer or director of any State bank or banking and trust company who shall knowingly violate the provisions of this article, shall be deemed guilty of a felony, and shall, upon conviction, be punished by imprisonment in the State penitentiary for a term of not less than one nor more than five years."

A. What article is that?

Q. Article 376. But passing from that for the present, we are not intending to apply it here.

A. All right.

Q. Article 377: "Any officer, director or employe of any State bank or trust company, who knowingly or wilfully fails or refuses to perform any duty imposed upon him by law, or who shall do or perform or assist in doing or performing any act or transaction prohibited by the provisions of this law, for the punishment of which provision is not otherwise herein made, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than five hundred nor more than one thousand dollars, or by imprisonment in the county jail for a term of not less than thirty days nor more than ninety days, or by both such fine and imprisonment."

Now, that plainly provides that the officers of a bank who knowingly make an overline loan may be punished therefor.

A. If done knowingly or wilfully. Since you have read the statute, it says "knowingly or wilfully." That would mean with criminal intent. It says, "if any officer, agent or employe"—

Q. (Interrupting): It doesn't say that, Governor, I beg your pardon—it does not say with criminal intent.

A. It says knowingly or wilfully.

Q. All right. They knew they were making those loans to you?

A. Oh, yes.

Q. They knew all about it?

A. Yes, sir.

Q. It was the result of a deliberate contract, you say?

A. Yes, sir.

Q. Well, they could not plead that they did not know what they were doing?

A. Well, "knowingly or wilfully," that is used in the same sense there with criminal intent. "Knowingly" is synonymous with "wilfully" and would mean criminal intent—"knowingly or wilfully" there.

Q. Do you think so?

A. Well, I think that would be a reasonable construction. But, aside from that, I am not making any technical defense, I am frank to say. I never heard of any—

Q. (Interrupting): Well, let's see if it is necessary to get technical. "Any officer, director or employe of any State bank or trust company, who knowingly or wilfully fails or refuses to perform any duty imposed upon him by law"—now, that is one offense—"or who shall do or perform or assist in doing or performing any act or transaction prohibited by the provisions of this law, for the punishment of which provision is not otherwise herein made, shall be deemed guilty of a misdemeanor" and so forth.

A. It all relates back to "knowingly or wilfully."

Q. You think so?

A. Yes, sir.

Q. Well, it is not possible for a bank officer to lend his money out contrary to the wording of the statute and claim he did not do it knowingly, is it?

A. No, sir, but "knowingly" used in that sense is synonymous with "wilfully."

Q. Well, the ordinary meaning of

the term "wilfully" is to do a thing intentionally?

A. Yes, with a bad intention.

Q. Well, that is the same definition?

A. Yes, sir, criminal intent.

Q. You knew and the officers knew that the State had enacted by its Legislature a comprehensive banking law, didn't you?

A. Yes, sir.

Q. One of the provisions of which was to limit the amount one man could borrow?

A. Yes, sir.

Q. Now, instead of lending twenty-five per cent, it was increased to thirty per cent later, I haven't it here before me, they permitted one man to borrow all of its capital stock, and the two together, the corporation—that is, not only to borrow all its capital stock, but more than its surplus and capital stock combined, and part of its deposits. Now, what kind of an intention could prevail there?

A. If the money was secured and it was paid it could not have been done wilfully.

Q. Could not have been done wilfully?

A. No, sir.

Q. If you had happened to make a mistake and loaned it out so it could not be paid, it would be wilfully and knowingly done?

A. Well, if they knew at the time it was unsafe and that they would lose the money and didn't use good faith, I quite agree that that would be the construction to put upon it. No Banking Commissioner that ever occupied the position in this State has ever put the construction on it that you have put on it, and if you are correct you should put half the bankers in Texas in the penitentiary.

Q. That's your answer to that.

A. Yes, sir.

Q. Now, you didn't know that that was put in the Penal Code the same way—Article 525 of the Penal Code?

A. No, that's the first information—I recall now that you read the statute in the investigation here in the spring.

Q. Yes, and it was made a part of the Penal Code by the codifiers of the laws?

A. Yes, sir.

Q. It was the law when you were doing that?

A. Yes, sir.

Q. Article 525 of the Penal Code of the State of Texas reads as follows: "Any officer, director or employee of any State bank or trust company, who knowingly or wilfully fails or refuses to perform any duty imposed upon him by law, or who shall do or perform or assist in doing or performing any act or transaction prohibited by the provisions of this law, for the punishment of which provision is not otherwise herein made, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than five hundred nor more than one thousand dollars, or by imprisonment in the county jail for a term of not less than thirty days nor more than ninety days, or by both such fine and imprisonment." Now, Governor, didn't it look to you that the Legislature was seriously putting limitations upon the power of banks to lend all of their money to one man?

A. That's the officers and employees. That law doesn't apply to the people, the man who borrows the money.

Q. All right. Now, let's suppose we accept your version of it there. Were you as Governor of the State not compelled to see that the officers of banks enforced that law, rather than to violate it for your benefit?

A. Oh, well, there was no intention to violate the law for my benefit.

Q. I am not asking about intention. The fact is it was violated, wasn't it?

A. No, sir, not by me.

Q. Didn't those bankers violate it when they loaned you that excess loan?

A. No, sir, because they didn't wilfully do it.

Q. The statute prohibited their doing it, didn't it, in words?

A. No, sir, not without they wilfully done it.

Q. Didn't the statute which I have read, the first section, state they were not authorized to lend you that much money?

A. Yes, sir.

Q. Then, the penal part depended, you say, upon whether they knowingly or wilfully did it?

A. Yes, sir.

Q. You define wilfull to mean done with corrupt purpose of losing the money?

A. Without reasonable precaution to see that it was safe.

Q. Your idea, then, is that the Penal Code ought to read that if any of these officers shall violate any of these laws with the intention of losing the money for the bank or without taking adequate precaution to secure the loans it is a penal offense—that would be your interpretation of "wilfully?"

A. If they knowingly or wilfully made a loan, brushing aside all business precaution or judgment and where the evidence would show that in all probability they would lose it, then that is the kind of statute that was intended to apply, and that is the reason the statute says "knowingly" or "wilfully." One is synonymous with the other.

Q. One is synonymous with the other?

A. Yes, sir.

Q. You think "knowingly" means not the word in its ordinary significance, but it has in this connection some strained or different significance?

A. No, sir, not strained. It means what it says, "knowingly" or "wilfully," one or the other.

Q. Now, Governor, isn't this the fair construction: that if a man by mistake or intentionally makes a loan to you which, added to the loans which you had theretofore made of which he was ignorant at the time, that he is not guilty of a criminal offense for doing that?

A. If it was not knowingly or wilfully done, I don't think so.

Q. Well, isn't that the meaning of it and the only meaning of it?

A. Yes, with a bad intention or corrupt intention, I think it is.

Q. In other words, he could violate the law so long as he did not intend to injure anybody by it?

A. If he used reasonable precaution and judgment in doing the thing.

Q. Yes. Now, on the same basis a bank teller or bank cashier could take all the money in the till provided he expected to be able to put the money back?

A. No, sir, not if he could not pay it back.

Q. Suppose he was a millionaire and abstracted it out of the bank and without authority and contrary to the terms of the law?

A. If he had the money—

Q. Yes.

A. If he had a million dollars—

Q. Yes.

A. No jury on earth would convict him of knowingly and wilfully doing that.

Q. Then your theory is that a rich man can be a chartered libertine—he can violate as many laws as he pleases as long as he is able to make good on the damages?

A. No, to illustrate what I mean, Major Littlefield could go in his bank, a man that is worth five or six million dollars and everybody knows it, and if he took a hundred thousand dollars in cash and went off with it at the time, went off to Europe or something of that kind, and something would happen in the meantime that he did not get back and some misfortune would overtake him or something of that kind, nobody would say that Major Littlefield would knowingly or wilfully take any money from that bank; but if the stenographer down there, who hadn't a cent in the world but his salary, did that, then it would be wilful, because by no process of reasoning could he prove to anybody that he thought he could ever put the money back.

Q. Now, is that your idea, Governor—don't you know that Major Littlefield would commit a crime if he were to borrow that money from the bank without the consent of the directors?

A. Well, I am saying without that law intervening.

Q. Now, without that law intervening—why is that law any more binding than the law on your bank and you that they shall not lend more than a certain amount of money to a certain man?

A. Well, I can only say as I have said, that the law you read relates to a wilful or criminal transaction; that is what it means, and it would not apply where it was honestly done.

Q. Suppose that an officer of a bank borrows money without the consent of the directors and yet with the intention of paying it back, is that a crime?

A. That is made per se a crime.

Q. Per se a crime?

A. He is not permitted under the law to urge his intention about that.

Q. I see. Well, why shouldn't he be?

A. Well, it is just like the law about carrying a pistol; a man can not urge the defense to carrying a pistol that he did not intend to carry it. The statute makes those distinctions between the laws.

Q. And therefore you think the statute which prohibits a bank president who may be worth ten million dollars from borrowing a hundred thousand without permission of the directors, that is per se wrong?

A. That is made so by the statute.

Q. Yes, made so by the statute, and yet that same man could go to the bank and borrow a million dollars from the officers provided his intentions were good and that would be all right—now, is that your theory, Governor?

A. Outside of the provision made for consent of the directors.

Q. No, we passed that. You admit if he borrowed a hundred thousand dollars from his own bank without the consent of his board or directors that that is a crime per se because prohibited by law?

A. Yes, sir.

Q. Yet you say that that same man, now, may go into the vaults of his bank and borrow a million dollars from the officers—

A. I didn't say a million; I said a hundred thousand, but go ahead.

Q. In excess of what the law requires of him, that is no crime, or allows some friend of his to borrow a million?

A. It would be no crime nor any violation of the law without the consent of the board of directors if he was worth the money. Here is what I mean: Suppose the board of directors gave him consent and he is perfectly good for the money, as the case I illustrated about Major Littlefield, worth more than a hundred thousand dollars. Suppose the board of directors give him consent, why, he can borrow that and there can not be any criminal intention about it, because everybody knows he would have to pay it, he couldn't escape it if he wanted to. But suppose the board of directors should give the stenographer consent to borrow a hundred thousand dollars, then it would look like it was a crime.

Q. Then your theory puts the banking law in the hands of the jury?

A. Yes, sir.

Q. If the jury believes in a particular instance that the State was fooled and it could not be collected or at least could not be saved, there is no way to enforce that banking law?

A. The laws of this country always put a man's intention before the jury. You cannot convict anybody without submitting it to the jury.

Q. Although he violates a plain provision of the law which is per se made a crime?

A. No, sir, when it is per se a crime a different rule applies.

Q. Well, this seems to be per se. It says, "Any officer, director or employe of any state bank or trust company, who knowingly or wilfully fails or refuses to perform any duty imposed upon him by law," is guilty of a crime, "or who shall do or perform or assist in doing or performing any act or transaction prohibited by the provisions of this law, for the punishment of which provision is not otherwise herein made, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than five hundred nor more than one thousand dollars," and so forth. Now, Governor, you are familiar with the Penal Code which prohibits the deposit of money elsewhere than in the State Treasury, aren't you?

A. Article 96 which you read there?

Q. Articles 96 and 97. Article 96 seems to have been adopted in 1858 and reads as follows: "If any officer of the government, who is by law a receiver or depositary of public money, or any clerk or other person employed about the office of such officer, shall fraudulently take, or misapply, or convert it to his own use, any part of such public money, or secretes the same with intent to take, misapply or convert it to his own use, or shall pay or deliver the same to any person, knowing that he is not entitled to receive it, he shall be punished by confinement in the penitentiary for a term not less than two nor more than ten years." Now, you know that that was amended in 1879 by making these additions to it: Article 97: "Within the term 'misapplication of public money' are included the following acts: first—The use of any public money, in the hands of any officer of the government, for any purpose whatever, save that of transmitting or

transporting the same to the seat of government, and its payment into the Treasury."—Now, if the Secretary of State were to use the funds that come into his hands for the purchase of livestock or bank stock, that you are quite sure would come under the terms of this statute?

A. Yes, sir.

Q. All right. Now, Section 3 of that same Act says: "The deposit, by any officer, of the government, of public money in his hands, at any other place than the Treasury of the State, when the Treasury is accessible and open for business, or permitting the same to remain on deposit at such forbidden place, after the Treasury is open." Now, the Secretary of State did deposit this money in the Temple State Bank while the Treasury was open for business and without any reason or excuse therefor, didn't he?

A. Yes, but you are reading only a part of the statute—you go back to the other statute, the first part.

Q. I have read it all except the intervening section.

A. I understand, but you are trying to read one part without the other. Before you could convict anybody under that statute, under the definition which you have read, you would have to go back up to the other statute there, the first one, Article 96, where it says if it is fraudulently done, and that is the gist of this whole thing. If Mr. Bartlett had fraudulently concealed or converted money or put it in some other place, why, sure that statute would apply; but the very definition you read there and which is attached on to that would be incomplete and you could not hope to convict anybody without you would plead the original statute to which the other refers, which says it must be fraudulently done.

Q. Well, now, let's see—let's read it and see and let the Court trying it see whether that is a fair construction. I will not enter into an argument with you.

A. All right.

Q. Here is the whole of it, now, every line that is written into the book: "If any officer of the government, who is by law a receiver or depository of public money, or any clerk or other person employed about the office of such officer, shall fraudulently take"—

A. Yes.

Q. "or misapply, or convert it to his own use, any part of such public money, or secrete the same with intent to take, misapply or convert it to his own use, or shall pay or deliver the same to any person, knowing that he is not entitled to receive it, he shall be punished by confinement in the penitentiary for a term not less than two nor more than ten years." Now, remember that was the Legislature speaking in 1858. Twenty-one years thereafter they added the following: "Article 97: within the term 'misapplication of public money,' are included the following Acts: First, the use of any public money, in the hands of any officer of the government for any purpose whatsoever, save that of transmitting or transporting the same to the seat of government, and its payment into the Treasury." Now, you admit that if they bought bank stock with the intention of converting it in less than ninety days and putting the money in the Treasury, he had no right to do that?

A. I think that would be strong evidence that it is fraudulently done.

Q. Isn't that the very thing that is made a crime and isn't it tantamount to the Legislature saying that the use of the money for anything else than putting it in the Treasury is a crime and the intent would be deemed fraudulent?

A. No, sir, you would have to prove it was fraudulent. In other words, if you didn't have Article 96, which requires a fraudulent intention, and you would leave the other articles there, you wouldn't have a case in court, you couldn't write an indictment on it.

Q. I see, that is your construction. Now let's see: "Section 2: 'The exchange by an officer, of one character of public funds in his hands for those of another character; the purchase of bank checks, or post office orders, in exchange, for transmission to the Treasury, is not included in this class.'" They want to protect him that far. "The deposit, by any officer of the government, of public money in his hands, at any other place than the Treasury of the State, when the Treasury is accessible and open for business, or permitting the same to remain on deposit at such forbidden place,

after the Treasury is open. The purchase of State warrants, or other evidence, of State indebtedness, by any officer of the government, with public money in his hands." Now, they are all put on a par there, Governor?"

A. Yes, sir, just as you read there.

Q. It was no advantage to the State to take this money that was already collected and ready for transmission to the Treasury, to take it to Temple, was it?

A. No, sir.

Q. It didn't conduce one iota to the public service, did it?

A. No, sir.

Q. And when the Treasury was on a deficiency and unable to pay the warrants as they matured, still there were public funds belonging to the State of Texas deposited in private banks over the State, weren't there?

A. Yes, sir, and every official in this Capitol is doing the same thing.

Q. I am not asking you that.

A. Well, you are not going to cut me off from that. You want to single me out here from the Supreme Court and the Attorney General and everybody else and make me a criminal. I think you ought to be frank about it.

Q. I am.

A. If I am a criminal and ought to be impeached and put in the penitentiary for that, then the House ought to have preferred charges against the Supreme Court, the Board of Regents of the University and every other member of the government, because it has been the custom for twenty-five years before I ever came to Austin to put this money in the banks. General Looney don't even do that, when you are talking about that. I think I am entitled to it, to be frank with each other. I don't want to make an argument with you, but you seem to single me out as the only subject for the penitentiary. I want to be just to myself.

Q. I think you misapprehend the situation?

A. All right.

Q. You know you are the head of the State government, and I suppose the Legislature thought they ought to begin at the head and come down, but we must deal with one at a time. You would not pretend to justify yourself and violate the law,

charged with the duty of enforcing it, because some subordinate had done so, would you?

A. No, but the Supreme Court does it.

Q. We deny that the Supreme Court does it and deny that the Attorney General's Department does it. Do you insist—

A. (Interrupting): You deny that the Attorney General's Department puts money in the Treasury the very day they get it?

Q. I am not talking about that yet, but I say if they do that it is no defense for you.

A. Well, I say it is a strong circumstance.

Q. Now, do you consent and do you believe it is the law for the Attorney General, if he did like Judge Davidson did, collected a million and a half dollars in an anti-trust suit as he did in the Waters Pierce Oil Company case, and he gives no bond, may or may not be solvent—and I cast no reflection upon him if he is poor—and yet, according to your theory could he take that million and a half dollars and put it in his pocket and carry it to Temple or to Galveston and not account for it for a period of ninety days?

A. According to the statute he could, until the time came to file his quarterly report.

Q. You think he could do that?

A. Yes, sir.

Q. You think it would be perfectly within the law?

A. No, I don't think that—well, let's see, it is not enumerated in any special enumeration of fees there.

Q. Is that good policy, Governor—does it conduce to the good government of the people of Texas and the careful conservation and preservation of their rights?

A. Well, with all due deference to the Attorney General, there isn't one of them that I wouldn't trust with that much money—I don't think there was any chance of losing it.

Q. Well, if you were a bank officer you wouldn't lend him that much without security—a million and a half without security?

A. Well, that is only a question of business judgment. When it comes to a question of personal trust it is a different proposition.

Q. Well, you wouldn't deliver him a million and a half of money

belonging to any corporation of yours and let him keep it, would you?

A. Well, if the law permitted him—you deliver four millions of dollars to the State Treasurer; he is a man like anybody else; it is a matter of personal trust.

Q. Well, that's according to law.

A. Well, so it would be with the Attorney General as I understand the law—I might be mistaken about that—until such time as he is required to make his quarterly statement, I think he would be entitled to the possession of it.

Q. You think then this statute passed in 1879 requiring the deposit of money in the State Treasury was not passed with any definite purpose of compelling it to be deposited there; is that your view of it?

A. I don't know what was in their minds or the intention of them was, but the statute itself makes it a condition precedent to the conviction of anybody that it must be fraudulently done.

Q. Well, suppose we pass that for the moment?

A. All right.

Q. When the statute says that the deposit by an officer of the government of public money in his hands at any other place than the Treasury of the State when the Treasury is accessible and open to business or permitting the same to remain on deposit at such forbidden place constitutes a felony, do you not believe it is the duty of the Governor of the State to see that that money is put in the Treasury and not left open to his intention in keeping it?

A. Well, I think it is the duty of the Governor to see that it is not fraudulently done. If it came to my attention as Governor that people with fraudulent purposes were putting the money around over the country it would be my duty to do it.

Q. What would you consider fraudulent purposes?

A. Well, what the term signifies for wild-cat speculation, or holding it beyond the time, things of that kind.

Q. Or to favor some particular friend?

A. Well, that might be included in it.

Q. Or as a basis of credit for a bank?

A. Yes, sir.

Q. Or the deposit of it for the

purpose of permitting a bank to draw interest on it?

A. If it was done with a fraudulent purpose I think that is true.

Q. Well, if it is put in a bank for three months, knowing that that is the use that is going to be made of it, wouldn't that be conclusively presumed that that was the object?

A. If it was done with the fraudulent purpose of making interest on it, probably you would be correct about it.

Q. Well, you realize the legal maxim that every man is presumed to know the reasonable and probable consequences of his own acts?

A. Yes, sir.

Q. Well, now, if the Secretary of State deposited a quarter of a million or a larger sum in bank, and it remains there and is used as this was used, wouldn't you indulge the presumption it was deposited there for that purpose?

A. I know absolutely it was not done for that purpose and was not fraudulently done, any more than General Looney's or the Board of Regents' putting theirs in, it was not fraudulently done.

Q. Did General Looney or any other State officer deposit any money in any other bank in which he was interested even for collection?

A. It makes no difference whose bank it was in. I put it in the wrong bank. That seems to be a great crime. If I had put it in an Austin bank it would have been all right.

Q. We think your mistake was in not putting it in the State Treasury, Governor, where it belongs—we are not operating any banks and have no interest in any bank either in Austin or elsewhere as depositaries.

A. All right.

General Crane: Mr. President, as a part of the examination of this witness I will read some parts of the banking statute which I had omitted, so we will get the whole thing in the same connection. "Section 89. No incorporated bank or trust company chartered under the laws of this State shall loan its money to any individual, corporation, company or firm, directly or indirectly, or permit any individual, corporation, company or firm to become at any time, indebted or liable to it in a sum exceeding twenty-five per cent of its capital stock actually paid in,

or permit a line of loans or credits to any greater amount to any individual, corporation, company or firm; all loans to the members of any unincorporated company or firm shall be considered as if they were loans to such company or firm in determining the limitation here prescribed; and the discount of commercial or business paper by a bank which is a member of a Federal reserve bank actually owned by the person negotiating the same shall not be considered as borrowed money; a permanent surplus, the setting apart of which shall have been certified to the Commissioner of Insurance and Banking, and which can not be diverted without due notice to said officer, may be taken and considered as a part of the capital stock for the purpose of this section; provided, however, that in no event shall any such loan exceed thirty per cent of the authorized capital stock of said bank, provided that the provisions of this section shall not be construed as in anywise to interfere with the rules and regulations of any clearing house association in this State in reference to the daily balances due from correspondents subject to drafts; and provided further, that the discount of the following classes of paper shall not be considered as money borrowed within the meaning of this section, viz:

(a) The discount of bills of exchange, drawn in good faith, against actual existing values.

(b) The discount of paper upon the collateral security of warehouse receipts, covering agricultural and manufactured products in store in elevators and warehouses, under the following conditions: First, that the actual market value of the property held in store and covered by such receipt shall, at all times exceed by at least twenty-five per cent, the amount loaned upon the same; second, that the full amount of such loan shall at all times, be covered by policies of fire insurance issued by companies admitted to do business in this State, to the extent of their ability to cover such loans; and all such policies shall be made payable in case of loss to the bank or holder of the warehouse receipts.

"Any State banking corporation may accept drafts or bills of exchange drawn upon it and growing out of transactions involving the importation and exportation of goods hav-

ing not more than six months sight to run; but no bank shall accept such bills to an amount equal at any time in the aggregate to more than one-half of its paid-up capital stock and surplus."

Q. Governor, you were asked yesterday about the University situation, your controversy with that, and the reasons for your differences with it. I believe the first statements were—the first difficulties were that some of the people there were traveling on mileage books, paying \$25,000 for a thousand miles?

Mr. Hanger: \$25.00.

Q. Twenty-five dollars for a thousand miles, and charging up to the University, or the State, \$30 therefor, as they used it. That was one of your objections?

A. That was part of the information which I laid before the Board of Regents.

Q. Yes, sir. You have been charging the faculty with immorality and bad conduct—I mean, in the restricted sense, if not—for permitting that to be done,—is that not true?

A. Yes, sir.

Q. Now, you were advised by the Comptroller that the same practices existed in the State government, were you not?

A. No, sir, I was not.

Q. Didn't you see the letter of Comptroller Terrell that was read in the House, and has been alluded to many times here, in which he called public attention to the fact that the department people were doing just those very things?

A. I remember your reading that letter in the House, I hadn't—my attention hadn't been called to that letter before that.

Q. Didn't you testify in the House, refreshing your memory, that you discussed those matters with Mr. Terrell, the Comptroller?

A. Well, I think I did discuss it with him, but I didn't know anything about his piece in the paper, as I now recall it.

Q. Yes, you discussed the practices that did prevail with the heads of the departments?

A. No.

Q. You heard Mr. Davis' testimony, the Commissioner of Agriculture, I believe?

A. Yes, sir.

Q. In which he admitted that it had been used in his department?

A. Well, that was the first I ever knew of it.

Q. But you knew in a general way from your discussion with Comptroller Terrell, that those practices did prevail among the officers of the State government?

A. No, I did not.

Q. The heads of departments?

A. He said something about it, but to what extent it prevailed, I didn't know about that.

Q. You did not institute any inquiry, then, upon the information given you by Comptroller Terrell?

A. He gave me no specific instances.

Q. Well, you could have required that, could you not?

A. Oh, yes, yes.

Q. Under the authority given you as Governor, to require sworn reports from the various heads of departments?

A. Yes, sir.

Q. You could have ascertained the precise extent of it, couldn't you?

A. Yes, sir.

Q. You did not do that?

A. No, sir.

Q. As I say, you did not do that?

A. I did not, no, sir,—no, sir.

Q. Yes. Now, when Dr. Vinson came in out here, you ascertained that that was corrected, did you not?

A. Entertained what status?

Q. I say, when Dr. Vinson, was elected you understood that that trouble had been corrected, didn't you?

A. No, sir. I learned after we were out there at the meeting that he was going to make some attempt to correct it, I think he said something about that.

Q. Well, didn't he state he was not only making the attempt, but had actually—the practice had been abolished, and instead of that, now, when they sent people out to travel, they gave them money for their expenses, and required them to account for it when they returned?

A. I think he said something about that, he was going to abolish it.

Q. Yes. Now, your other item was, one of your troubles was, that Mrs. James had been taken up to Fort Worth with her husband, and that it had been attempted to collect the expense account for her going. You thought that that was not right?

A. I thought the great crime was

in Dr. Battle, the President of the University, going in deliberately and asking the Auditor to falsify or change the account.

Q. Well, now, you knew Dr. Battle denied that, didn't you, that there was a misunderstanding about it?

A. No, sir, I never knew that he had ever denied it.

Q. Well, you knew this far, that he did state to you and stated to everybody, that he came back to the Auditor immediately and told him not to do that?

A. I know, but he always admitted that he—that he did not ask him to change the vouchers.

Q. Well, then, he admitted that he corrected it, didn't he?

A. How is that?

Q. He admitted that he corrected it?

A. I think he said that it was paid by Dr. Ellis.

Q. Well, didn't he admit that he corrected it and told the Auditor not to change it in that way?

A. I don't recall that. My recollection of it was that the account was not paid by the State.

Q. It was not paid by the State?

A. Oh, they took it out as soon as this question was raised—I think they took the whole thing out.

Q. Well, didn't Dr. Battle—that is not the point—didn't you understand that Dr. Battle advised them to take it out?

A. No, sir, I did not.

Q. Now, you did not understand that?

A. No, sir.

Q. Now, you understood how that account arose, too, didn't you?

A. I understood—

Q. (Interrupting): Didn't you understand that they had invited a professor from Pennsylvania or some of those Eastern States to deliver a lecture at Fort Worth in some of their extension class work?

A. Yes, sir.

Q. And that at the last moment they found that he could not come, and they had agreed to pay his expenses here from Pennsylvania and back, and then didn't you understand that they had procured Dr. James—tried to procure him to fill the appointment, and that he stated he could not go unless his wife would go, because there was nobody to stay with her and the baby?

A. That is what they stated out there at the meeting.

Q. That is what they all stated about it, and that was the understanding, and it was upon that hypothesis that anybody suggested that it was right for the State to pay her expenses. Now, in the matter of expenses, as showing immorality, if it does show it, that would be an unnecessary expense, wouldn't it—any expense that would be unnecessary to charge to the University?

A. What—I don't understand what you mean, General?

Q. I mean that any expenses that they incur that are 'not necessary,' that would be something to criticise, wouldn't it?

A. No, not necessarily so; there are some expenses that might be spent as the result of a mistake of judgment, in which event if spent in good faith and permitted by law, why, it would not be subject to criticism.

Q. Well, suppose that little amount of paying that good lady's expenses to Fort Worth and back was the result of mistaken judgment, it was believed that that would be cheaper to do that than it would to pay the expenses of a man from Pennsylvania,—you wouldn't attribute any moral turpitude to that, would you?

A. Not at all. The moral turpitude of the thing was to go in and deliberately change the vouchers so as not to show the facts. The amount of money is nothing.

Q. Well, but that was changed back again, wasn't it?

A. No, sir, not so far as—they took it out, and I don't know what ever became of it. I never heard what became of the vouchers, because they were not permitted to say.

Q. They did not permit the State to pay that, because somebody objected to it, wasn't that it—and Dr. Ellis paid it out of his own pocket—isn't that a fact?

A. That is what they say—I don't know.

Q. Yes. Well, now, you had travelling expenses that may or may not be authorized by law—for instance, you took the Assistant Attorney General with you to New York, didn't you?

A. Yes, sir.

Q. His duties were before the Court of Criminal Appeals, as a rule, weren't they?

A. Yes, sir.

Q. As a rule they attend to no civil business, do they?

A. No, sir, but he is advisor to the Governor, appointed by the Governor.

Q. Appointed by the Governor, to be sure?

A. Yes, sir.

Q. You took him with you and paid his expenses to New York and back, didn't you?

A. Yes, sir.

Q. Now, you also employed a Mr. Craddock, out of the fund that was created for the enforcement of the law?

A. Yes, sir.

Q. Now, the Committee appointed by the House in March did not agree with you about that, did they?

A. They did not agree with me about the advisability of making—

Q. About your authority to do it, isn't that the report?

A. Well, I don't know, I don't recall about that.

Q. Didn't they advise you that the money appropriated for the enforcement of the law was to be limited and restricted to a narrow channel, and that it was not intended to give you authority to employ men at salaries of \$150 or \$300 a month to do mere administrative work?

A. That was their construction of the law.

Q. That was their construction of the law?

A. Of course, I never agreed to that.

Q. You never agreed to that?

A. And I think the best piece of work I have ever done since I have been Governor, financially, was the employment of Captain Craddock.

Q. Yes. Well, perhaps, now, the University professors would say that the good piece of financial work they did for the University would have been to have sent Dr. James and his wife to Fort Worth, rather than pay the expenses of that man from Pennsylvania and back?

A. Oh, no, there is a difference; if I had wanted to put the account something else than the employment of Captain Craddock, instead of making a wide-open entry about the employment of Dr. Craddock, and concealed it by saying it was something else, then it would have been the crime.

Q. Well, now, let's see about

that. If you are mistaken in the proposition and the House was right about it, that Captain Craddock was not employed in the enforcement of the statutes of Texas, within the meaning of the law, you paid his salary out of that appropriation, didn't you?

A. Yes, sir.

Q. And on the surface of things if you were mistaken about that, the voucher ought not to have been so named, ought it?

A. No, sir. But if I was right about it—

Q. Exactly?

A. It was—and that involved a construction of law, quite a different thing from a man deliberately going and having a voucher changed to destroy and conceal the facts.

Q. Why, everybody in the University knew what the facts were, didn't they?

A. They didn't know it until Will Long bucked on him and told him he wouldn't do any such thing, that he would have to get somebody else to change that voucher, he wouldn't do it.

Q. Now, you are telling hearsay about that?

A. Well, that is what the record shows out there, that was the first time anybody knew anything about it.

Q. And the record also shows, and the testimony shows, that Dr. Battle said he came back and told him not to put it in?

A. Oh, yes, after Will Long called him down; I guess he began to see what he had done.

Q. Now, you do not mean to say that Dr. Battle is dishonest, Governor, because of that one item, do you?

A. Well, I don't know, I am just telling you the facts.

Q. All right. You wanted to dismiss him after twenty years of service for that one mistake, didn't you?

A. No, sir—no, sir.

Q. What else did you have against him?

A. Why, the greatest thing I had against Dr. Battle was, if you will let me tell you, now I will tell you.

Q. Yes?

A. When I came to Austin Dr. Battle called on me—

Senator Bee: Speak a little louder, Governor.

A. Yes, sir. When I came to

Austin, was inaugurated Governor, Dr. Battle came to me—called on me and after we had discussed matters in general in an informal way, the conversation drifted on to the question of the University, its maintenance and support. I said, "Doctor, I want you to know that I am elected on a platform pledged to liberal appropriations for the maintenance and support of the University, and I want you to know that I am in good faith about that proposition, and I want to be more than liberal with the University"—

Q. Before we get through with that—we will come back to Dr. Battle afterwards—I do not mean to cut you off from that, but let's go to his account first?

Mr. Hanger: We think that he asked the question—

General Crane: No, I am coming back to that, I prefer to put the question in my own way.

Mr. Hanger: Well, but this is an explanation called for, and in justice to the witness he ought to be permitted to finish his explanation and not to be cut off in the middle of a sentence. That is not the—

General Crane: I agree in it, Mr. President, I think I have a right to examine my witness—or cross examine the witness in my own way. I want to withdraw that, and I will come back to this proposition when I get to it—but I withdraw this question.

Mr. Hanger: Very well, if you will come back to it.

General Crane: Oh, I will come back to it.

The Chair: The witness will be permitted to make the explanation.

Senator Hopkins: Mr. President, I would like to hear the witness answer the question.

The Chair: The witness will be permitted to answer it fully later.

Q. Going back to the question of the voucher's not showing precisely what the facts were, now, let's see, Governor, if your vouchers always did show that. You presented to the Comptroller vouchers monthly for incidentals, under which item was paid your grocery bills, your feed bills, your butter and egg bills, your automobile repairs and all that sort of thing. Now, do you think that term "incidentals" fairly stated those items?

A. Yes, sir.

Q. You do?

A. Yes, sir. If that is not incidentals, what are incidentals?

Q. Well, now, you are perfectly aware of the fact that the Legislature, in Governor Colquitt's administration, made an appropriation for "groceries and incidentals," aren't you?

A. Yes, sir.

Q. And you are perfectly aware of the fact that the Legislature in your case omitted the term "groceries," but left in the word "incidentals?"

A. Yes, sir.

Q. They struck out the word "groceries" in the appropriation bill?

A. Yes.

Q. And yet, with that word stricken out, you made the term "incidentals" include everything that Governor Colquitt made "groceries and incidentals" include, didn't you?

A. Made it include groceries, yes, sir, and put it in the record. The difference between your case and my case about "incidentals," and the Dr. Battle case was, that I told the facts, what I did it for; he wanted to change it so it would not show the facts.

Q. Didn't your contract with old man—the grocery man here, Mr. Achilles, isn't that simply—wasn't it a contract that he was to furnish you the things that appropriation bill called for, and "incidentals?"

A. Yes, sir, that is a fact.

Q. Ice, light, power and incidentals?

A. Yes, sir.

Q. That was the only contract you had with him, and isn't it true that your vouchers down there covered the same under the head of "incidentals," paid out of the appropriation for incidentals.

A. Yes, sir, and they show the facts.

Q. They show that they are incidentals?

A. Yes, sir.

Q. But they did not show it in your contract with Achilles, did they?

A. Yes, sir, I think the contract with Achilles provided that he should furnish light, ice, water and incidentals—

Q. Yes sir?

A. —and incidentals.

Q. And that is the contract upon

which you proposed to get the warrant for the \$1,796, wasn't it?

A. Yes, sir.

Q. And if Achilles had gotten that \$1,796, the Comptroller would have had no more information upon that subject, would he—you would not have filed any accounts down there?

A. Yes, sir, I would.

Q. Why, you would have given them to Achilles?

A. I understand, but I would have filed an account there just like the Attorney Generals have frequently, for \$500 and \$600, in advance here, and afterwards filed a statement of the account.

Q. Did any one of them get a warrant for five or six hundred dollars in advance and file the account?

A. Yes, sir, the record shows Mr. Lightfoot got one for \$500 on his trip to New York, in advance—went to New York and back.

Q. Well, let's not get into Lightfoot's arrangements, because he is not here. But the fact is, your contract with Achilles did not mention groceries, did it?

A. No, sir.

Q. And it was by that contract and the warrants drawn thereon that you expected to get that money out of the Treasury?

A. Incidentals.

Q. Incidentals?

A. Incidentals.

Q. I see.

A. Incidentals might not mean a little article, it didn't mention any articles specifically; according to your construction, you could not buy anything under "incidentals," because they had not specially enumerated.

Q. Well, I will not go into the definition of the word with you just now, the Court will do that later.

A. All right.

Q. Now, then, we will go back to Dr. Battle: you were going on to tell what your grievance against him was when you came here and when he came to see you?

A. Yes, sir.

Q. All right, just proceed, please?

A. As I was saying, I told him that—after the formalities had been dispensed with, I told him that I was elected on a platform for liberal appropriations for the University, but I wanted him to know that I really meant that in all that the term implied. "But," I said, "I see

here, from looking into the record, that the University appropriations have grown continuously from year to year, and that now the budget you are asking for is very much more than you have ever asked for before, and I want to call your attention to the fact that the democratic platform passed at El Paso provided that all appropriations should be carefully itemized. And," I said, "I think this platform specially applies to an institution like the University, in view of its custom heretofore. I understand your custom has been heretofore to come down to the Legislature and ask for a lump sum of money and it would be given to you without any itemization in it, and the money would be turned over to the Board of Regents to spend as they desired." My opinion I told him was that as long as the appropriation was not large, the people did not care so much about it, that they knew it must be spent with—must be spent within the bounds of reason, but I said, "now, when the appropriation has reached so large an amount, extending up to over a million dollars, my opinion is, Dr. Battle, that if you get such a large appropriation and you will continue to get such appropriations in the future, you must tell the Legislature, as representatives of the people, what you are going to do with that money, and the people of Texas are liberal on the question of expenditures for education, provided they think that the money is being economically expended, and that is one reason why we put it into the El Paso platform, that the appropriation—all appropriations should be itemized, and my opinion is that the best interests of the University will be subserved by you as president of the University, carefully itemizing, for the information of the Legislature, just what you are going to do with all this large amount of money, and in that way they will be enabled to tell the people what they are—why they voted for such a large amount of money; and if you do not do that, I think you are going to hurt the University, and people might suspicion there is something wrong about a great large appropriation for the University." And he said, "Governor, I am glad that you mentioned that, you can rest assured that I am heartily in sympathy with the sentiment expressed,

and I am glad to see that a man like you has been elected Governor of this State, who has had the nerve to declare for liberal appropriations for the University." He said, "Nobody has ever gone as strong in their platform about the cause of education as you have, and," he says, "I just welcome the day that you are in this chair, and you can rely implicitly upon my statement when I tell you that every bit of that appropriation is going to be carefully itemized, presented to the Legislature, and for the purpose it is passed, and itemized to the Legislature. You can further rest assured that we are going to spend all that money just exactly like we told the Legislature and like we told you that we are going to spend it," and he went so strong on the proposition that I was really gratified at the sentiment which he expressed. Well, in due time the appropriation was passed, and—and with a great long itemization as he had stated it would be; and when the bill was approved—when the bill was passed and in due course came down to my office for approval, I saw that it was a great long list of appropriations, and so I sent for Dr. Battle, and I said, "Doctor, you have got a great large appropriation here, and I am frank to say that a great many of the items I know nothing about, but there is so much of it, and so many different items, that I have taken the liberty to extend—to ask you to come down here and just tell me a little something about this bill." "Well," he says, "I will be glad to tell you anything that I can." And then it was that I reached over and picked up the bill, not intending to hit upon any item, and I said, "Here is an item of \$3250 to pay the Professor of Sociology"; I said "I don't know what 'Sociology' means, but I would like to know the gentleman's name." "Well," he said, "that position is not filled at present." I said, "Well, what was his name last year?" "Well," he said, "We didn't have anybody last year in that position." I said, "What is his name going to be this year?" "Well," he said, "we ain't going to have anybody in there." I said, "You are not?" I said, "Under that is a Professor of Clinical Psychology," I said, "What is his name?" "Well," he said, "we haven't got anybody in that position." And I said, "Well,

what was his name last year?" "Well," he said, "we didn't have anybody." "Well," I said, "what is his name going to be this year?" "Well," he said, "we haven't made arrangements to employ a man of that kind." I said, "Well, then, of course, those two items will come out of the bill?" He says, "No, no, Governor, we will leave them in there, we want to use that for some other purpose." I said, "Some other purpose—what?" "Well," he said, "we don't know just yet." "Well," I said, "Doctor, you have raised at least my curiosity, and I am afraid you are going to raise my suspicion." I said, "Tell me something more about the rest of those fellows. I see you have a man here by the name of—to the tune of \$2000, Assistant Secretary of the University, what is his name?" He says, "Well, he is like the other two fellows, he don't exist." "Well," I said, "how much of this is going on here?" "Well," he said, "I can't tell just exactly." "Well," I said, "Doctor, you certainly have made an astounding statement," I said, "you told me that you were going to be entirely frank with me and the Legislature, that you were going to itemize this bill carefully, and that you were going to tell me and the Legislature just what you wanted, and that you were going to spend the money just like you said you were going to spend it, and," I said, "you admit that you have done something that an Irish section boss down here on the I. & G. N. would be fired for, for carrying a dead man, if he was caught doing the same thing that you have said you admit that the President of the University has done," and, I said, "the amount of money almost becomes an incidental matter, now, as to the principle involved, here you have a willing Legislature, the most liberal Legislature in the history of the State, giving you nearly twice as much money as any Legislature ever did in the world, and yet you admit that you deliberately told them you were going to employ a Clinical Psychology man at \$2500, a Professor of Sociology at \$3250, and an Assistant Secretary at \$2000 a year, knowing at the time by your own admissions now, that you never intended to have such men that you didn't have them, and never have had them, and," I said, "I am

pained to hear you make that remark," I said, "How much more of this thing is there in this bill?" "Well," he said, "I can't tell you all about it now." I said, "I am not going to approve this bill now until you tell me something about it, until I know something more about it, you have put me on notice," or something, "and" I said, "are you going to spend the rest of the money like you say you are going to spend it?" He said, "Yes, sir. Now, Governor, you must approve that bill like it is, we have itemized it, and if you go to cutting out different items, it will be just like knocking the cogs out of a wheel, and you will disconcert all our plans, and we are going to spend it just exactly like we say, and we are not going to spend any more items like that; and those items are in there," and that is the explanation he gave me. "And there are no more items to that extent, like that." Well, after some conference with the Board of Regents and their promise that these matters would be rectified that I told them about, I finally approved the bill in pursuance of his argument that the bill had been itemized, and that they were going to spend the money just that way, and that I could rely upon it; and upon his assurance, and upon the others' assurance, I approved the bill, and in a day or two I went to Temple, and I saw Dr. McReynolds, I—

Q. Well, now, we do not want any conversation with him?

A. I won't; but he was then a Regent of the University. He exhibited to me a budget which Dr. Battle had sent him.

General Crane: Well, now, I object to that, I object to his statement, that is hearsay, of Dr. McReynolds, as to what he exhibited to him.

The Chair: Well, that is hearsay.

Mr. Hanger: Did you afterwards talk to Dr. Battle about it?

A. Oh, yes; there was no denial that that was the budget.

Mr. Hanger: Well, but did Dr. Battle ever tell you that it was the budget?

A. Oh, there was no denial that that was the budget. I don't recall that he did, but it was the budget.

General Crane: Well, let's cut that out until it is identified better, because a conversation between him

and Dr. McReynolds at Temple, when giving his troubles with Dr. Battle, is not proper, and is not admissible. The budget is the best evidence of what it contained—anyway, we will get it.

A. I will say this, that I afterwards made this very same statement in the presence of the entire Board of Regents, no denial was made of the fact that it was the budget.

Q. Well, we are simply dealing with Dr. Battle now, and—

A. Well, all right. Maybe I can obviate that. I got whatever information that I got from Dr. McReynolds and I came back to Austin and compared it with the information—with the appropriation bill, with the dates of its execution.

General Crane: Now, I object to his comparing the appropriation bill with the information he got from Dr. McReynolds. That is but another way of getting in hearsay testimony.

The Chair: It seems it might be permissible, if the budget were offered here, showing the contention, if any.

General Crane: If they have the budget here we have no objection to it, but to take his recollection of the information given him by some third party as to the contents of the budget, we object to it, we think that is not the way to do it.

The Chair: The objection, I think, is good, what the recollection is.

A. (Continuing): All right. I got back, and from that information I made a parallel column of the appropriation bill and the information I had received and found that by comparison of the date that at the very time that Dr. Battle—

General Crane: Now, this is the same thing over again. He is comparing the appropriation bill from the information he received, and he received the information from Dr. McReynolds. I respectfully submit the ruling of the Court is not being followed.

The Chair: The witness will not base his testimony on hearsay with which Dr. Battle is not connected.

A. (Continuing): Dr. Battle signed it, this budget, I am not talking hearsay, I am talking about the information. Dr. Battle signed it.

Mr. Hanger: When you were there talking with the Board of Regents, was Dr. Battle there?

A. Yes, sir.

General Crane: The budget is the best evidence, Mr. President, and we want the budget itself.

Senator Woodward: Is Dr. Battle on trial or is the testimony being offered to show the purpose the Governor had in his actions?

The Chair: It was to show the reason for his attitude toward Dr. Battle.

Senator Woodward: The Governor's motive, that is what I thought. It does not look to me it would be material whether Dr. Battle was present or not.

The Chair: It is shown that he was present.

The Witness (Continuing): I found after examining the matter that at the very time he was asking me to approve that bill, and telling me he was going to spend it just exactly like he said he was going to spend it, that he had changed the whole thing.

General Crane: I object to that. I object to what he found out. The witness is a lawyer and he understands any legitimate evidence as to what he found or how he found it, any statement Dr. Battle made to him is admissible and we don't object to it. The production of the budget is not objected to, but his conclusions upon information that he may have derived from this source or that, we object to because we think it is contrary to all of the rules of evidence laid down in all the courts.

Mr. Hanger: We hope the Chair will remember that this is an inquiry which was gone into by General Crane asking him as to his attitude with reference to Dr. Battle, what his attitude was, and what the basis or foundation of it was. That is the substance of the inquiry as begun and carried on by General Crane for the House Managers. We respectfully submit that the statement of the Governor, the information which came to his mind which made up his attitude, which was the basis and foundation for it, is admissible here on that matter, we think.

The Chair: On this point, that is correct, but in the opinion of the Chair that would not warrant testimony as to the contents of the budget when the budget itself would be the best evidence, and that particular objection, I think, is being made right now. The witness stated that he compared and found that they were in no ways alike. The original bud-

get you might conclude that was brought to him by Dr. Battle—

Mr. Hanger: It wasn't brought to him first, as I understand it. As I understand it, the budget was never brought to him, but was in the possession of the Board of Regents, this budget. (To the witness): Did you ever have that budget?

A. Dr. McReynolds gave me this budget.

Mr. Hanger: Have you that budget now?

A. I don't know whether I have or not.

General Crane: That is what we want, is the budget.

Mr. Hanger: That is there anyway, of course, we will get the budget when we can.

The Chair: This, under particular inquiry, in the opinion of the Chair—the Chair does not altogether wish to stand against the objection, secondary evidence might be offered.

Mr. Hanger: We will try to get the budget if we can find it.

The Chair: All right.

A. (Continuing): From information which I obtained, I knew, and believed, now believe and never have doubted a minute since that Dr. Battle deliberately misrepresented and falsely stated to me that he was going to spend the money like the Legislature appropriated it at the time he told me he was going to do it, because the information which I—

General Crane: There again, Mr. President, the witness takes a new tack and undertakes to say the information which he has gotten, again contrary to the ruling of the Chair. We want the budget, which ought to be accessible. Let us see what facts they furnished.

The Chair: The witness will not testify as to the contents of the budget.

Judge Martin: Mr. President, I think you misunderstand the witness. He said he wasn't attempting to give the contents of the budget. He said upon the information he received he believed and now believes certain things, and goes on to tell what it is.

The Chair: Yes, sir, that is all right.

General Crane: The information that he received is what the budget contained.

The Chair: The witness will not testify as to what the budget contained.

General Crane: That is the in-

formation he receives, and that is the point I am objecting to, that instead of stating what the budget contains he omits that where he says the information he received from Dr. McReynolds.

The Chair: The witness will state the information he received, stating it within the rules of evidence, not the conclusion of the information.

A. (Continuing): I want to comply absolutely with the ruling of the Chair. Do I understand I may state I received information?

The Chair: Counsel wants the witness to state the information received.

General Crane: What was the source of it?

A. From different sources.

The Chair: Only the testimony shown by original facts.

A. By the admission of Dr. Battle afterwards.

General Crane: That's all right, if Dr. Battle made the admission we have no objection.

A. At the meeting of the Board of Regents in which discussion was made afterwards in his presence.

The Chair: Any discussion by Dr. Battle, and discussion in his presence, is admissible.

A. (Continuing): Anyhow, I was going to state I believed then and I believe now he deliberately—

General Crane: I object to his stating opinions. Let him state what he did.

Judge Martin: Mr. President, this is an inquiry as to the basis for certain acts by this Respondent towards President Battle. They asked him for his reasons for certain things, and we take it that anything outside of the contents of that budget that made an impression upon his mind, it would make no difference, for the purpose of this examination, whether it was true or false, if an impression was created upon his mind that a certain condition of affairs existed, a certain state of things existed it would make no matter so far as he was concerned whether it was true or whether it was false, but stating the impression made upon his mind he can give it as a reason for his action, in regard to his transaction with President Battle. He now attempted to state, he is stating, the impression upon his mind that was received from admissions made by Dr. Battle before the

Board of Regents, discussing with him, and information that came to him from other sources, what his belief was then, and is now. And certainly, he would have a right to testify as to any condition arising from his belief then or now, outside of the itemization contained in the budget.

The Chair: The Chair understood the witness was undertaking to state his reasons for opposition to Dr. Battle. Of course, those reasons can be stated, it is perfectly proper; it can be done, but the information on which conclusions are based, which seem to be required under the rules of evidence—now within the meaning of the facts there, such facts as would be competent evidence. The Chair is not saying that hearsay would not be admissible to show his reasons, I am not saying that at all, but not the conclusions that the witness formed in conference there between himself and the Board of Regents, but the facts first upon which those conclusions are based—I think the witness ought to state those facts.

Judge Martin: As we understood the witness he just stated the facts.

The Chair: Possibly so.

General Crane: I did not understand the witness that way, Mr. President. We are trying to get what Dr. Battle said.

The Chair: What was said by the Doctor?

General Crane: What was said, not the comparing, surely, but he is stating his conclusions instead of stating facts. State what was said by Dr. Battle and what was done.

Judge Martin: Going back, as we recollect his questions to the Respondent, was what were his objections to Dr. Battle, and he started in to tell, and as a basis for this last question he attempted to answer, when objection was raised that he was attempting to give by hearsay the contents of the budget. The witness stated that it was not based on that alone, but it was discussed at a meeting of the Board of Regents, and he was basing his belief upon what Dr. Battle said to him then, and what he had heard from other sources.

Senator Gibson: Mr. President, may I ask counsel a question?

The Chair: Provided it is not a question for the witness.

Senator Gibson: I want to ask if there were two budgets, if there was a budget on hand at the time

this conference took place with the Board of Regents?

General Crane: I presume there were, I don't know, but I guess there were. I know nothing of that except what the witness is telling, but I just assume, there is a meeting of the Board of Regents and there are some of them in town, Major Littlefield is here, I think.

Senator Gibson: That would be admissible in this case.

General Crane: That is not the point now, I am willing for him to state what was said at the meeting of the Board of Regents but I think the budget ought to be introduced.

The Chair: On considering it further the Chair thinks, is of the opinion, that he ought to state what was said, and he has the right also to state his conclusion, because counsel for the Managers asked him his objections, his reasons that aroused it.

General Crane: Your Honor, counsel for the Managers, Mr. President, had no idea of going further than to find out what facts he predicated his objections on as to the unfitness of Dr. Battle. Now, the opinion anybody might obtain of Dr. Battle, without the facts, would not be pertinent. The facts, I want them first, and see if the opinion is well founded.

The Chair: We want the facts, then he may state the opinion based upon the facts.

The Witness (continuing): As the Chair has ruled I cannot answer that, I will say nothing more about it. After he had made his statement to me and stated he was sincere in it, and he was going to spend the money just like he told the Legislature he was going to spend it.

General Crane: Are you going back now to the interview when the Legislature was in session?

A. I am telling you about the interview I had with Dr. Battle.

Q. We passed over that, I thought. I thought you were going to take the interview you had with Dr. Battle—with the Board of Regents?

A. I want to refer to it again in order that I may be understood.

Q. Very good.

A. After he had told me, and upon his statement which had been the basis for me signing the bill, that he wanted to spend this money just like he had told the Legislature

he was going to spend it, after he had made that argument if I vetoed any item in there it would be like knocking the cogs out of a wheel, that he was going to spend it scrupulously just like they had told the Legislature, and about ten days thereafter he wrote a letter which was published in the papers.

General Crane: Now, we would like to have that letter, rather than your memory of it. I presume you have it somewhere, or can get it.

A. No, he didn't write it to me, he wrote it to the Attorney General, and it was published in the papers.

Q. Then we can get it from the Attorney General, or the letter.

A. I can't tell you about this if you are going to cut me off on everything and not let me explain.

Q. I simply want the best evidence of what was said, Mr. President.

A. He wrote a letter, then, and emphatically denied—

General Crane: Mr. President, I must insist that the rules of evidence must be followed.

The Chair: The letter is the best evidence, if it can be produced.

The Witness: I never had the letter, he never wrote it to me, it is not in my possession, I just read it.

The Chair: The testimony, Governor, in the opinion of the Chair, the contents of the letter, if it is not shown the letter is not in existence, would not be admissible over objection.

Senator Page: Mr. President, I will make this suggestion: Send down to the Attorney General's office and if he has not got it, then he can testify.

General Crane: I take it the newspapers can be found, we will try to get them, Mr. President, after noon. We might pass over to some other part and let them go on until adjourning hour.

A. (Continuing.) Anyhow, he took the position that the whole attempt to itemize the appropriation bill—

Q. Are you stating his position in the letter?

A. Yes, sir.

Q. Now, that is exactly what the Court had ruled out.

Mr. Hanger: Let's wait until two o'clock and get the letter.

The Witness: All right.

Q. We will pass to some other

item, then. Now, you knew about all those objections to Dr. Battle?

Mr. Hanger: We would rather get the letter and finish this explanation. The promise was given to the witness when he started out that he would be allowed to explain his position.

The Chair: The witness will be allowed to make his explanation.

Mr. Hanger: I understand that the Chair will see to that, but I mention to counsel it is now five minutes of adjourning time and there are two matters to be looked up, a budget and a letter, and we would like to have the witness to go ahead in this case and finish the explanation.

Senator Hudspeth: In view of the statement of counsel I move that the Court recess until 2 o'clock.

The Chair: Senator Hudspeth moves that the Court recess until 2 o'clock this afternoon. Those in favor of the motion will say "Aye," those opposed will say "Nay." The ayes have it, and we will recess until 2 o'clock this afternoon.

(Thereupon the Court rose and recessed until 2 o'clock p. m.)

In the Senate.

President Pro Tem. Dean in the Chair.

Recess.

At 12 o'clock m., Senator Johnson of Hall, moved that the Senate recess until 2 o'clock today.

The motion prevailed.

After Recess.

(Afternoon Session.)

The Senate was called to order by President Pro Tem. Dean.

Bills Signed.

The Chair, President Pro Tem. Dean, gave notice of signing and did sign in the presence of the Senate, after their captions had been read, the following bills:

S. B. No. 14, A bill to be entitled "An Act creating the Rock Island Independent School District as passed by the First Called Session of the Thirty-fifth Legislature."

H. B. No. 10, A bill to be entitled "An Act to amend the special road law of Cass County, Texas, enacted by the Regular Session of the Thirty-fifth Legislature, 1917, which became effective June 2, 1917, same being an Act to create a more efficient road law for Cass County; making the county commissioners ex officio road supervisors, defining their duties and fixing their salaries; 'An Act to create a more efficient road system for Cass County, Texas, and defining the powers and duties of the commissioners' court of said county relative to roads and bridges of said county, and making county commissioners of said county ex officio road supervisors of their respective districts, etc., and declaring an emergency'."

H. B. No. 17, A bill to be entitled "An Act to establish the Anahuac Independent School District in Chambers County, Texas."

In the Court.

Wednesday, September 19, 1917.

Afternoon Session.

(Pursuant to recess, the Senate, sitting as a High Court of Impeachment, reconvened at 2 o'clock p. m.)

The Chair: The hour having arrived for the convening of the Court, the Sergeant-at-Arms will see that the Chamber is cleared—the hour has arrived now for the convening of the Court,—see that the Chamber is cleared of any not entitled to its privileges. The Court will come to order. Are you ready to proceed, gentlemen?

Mr. Hanger (To Governor Ferguson): Come around, Governor.

Thereupon, the Respondent,

JAMES E. FERGUSON,

resumed the witness stand, and in answer to questions propounded, further testified as follows, to wit:

Cross Examination (Resumed)
By General Crane.

Q. Governor,—

Mr. Hanger: I insist that the Governor is in the middle of an answer to a question, let him answer the question.

General Crane: Well, I insist that he is not, Mr. President. The question was—we stopped on the

question as to the copy of the Attorney General's letter, we were trying to get that in the interim, and I am cross examining him now, and if I omitted to ask him any question, or failed to give the Governor any opportunity to say what he wants to say, he may say that on redirect, but my cross examination ought not to be interrupted by any irrelevant suggestions of that sort. The proposition I was going to make, and do make now, is that all of the correspondence between the Governor, the Board of Regents, and Dr. Battle be put in this record so the Court can have it. There is no question pending now except what was the contents of the Attorney General's letter, and I think the record will so disclose.

Mr. Hanger: I beg the President's pardon for making an irrelevant suggestion. I am sure there could be no mistake, however, about the position that we adjourned in order that two things could be gotten by which the Governor might continue to answer a specific question propounded by counsel for the House Managers. We think that he ought to be permitted to continue to answer that question, that when a question is once asked and partially answered, that its answer cannot be interrupted, because the answer is not complete. We concede, of course, if the question is asked and before the answer begins is withdrawn, that ends the inquiry so far as the interrogation by that side is concerned; but where the question is propounded and partially answered, the witness has the right, the Court has a higher right, to hear all of the answer, and the witness has a right to continue to answer. We submit that is the rule.

The Chair: I think the witness has the right to conclude the answer, or the explanation, whatever you may call it—it is a part of the answer to his question, before being asked any other question.

Mr. Hanger: Yes, sir.

The Chair: If the witness had already begun the answer and had partially answered the question, I think he should be permitted to continue his answer.

General Crane: Well, now, let's see the state of the record. The Governor had undertaken to state the contents of the letter to the Attorney General.

Mr. Hanger: Yes, sir.

General Crane: We were asked to get a copy of it, or to get the original. Now, in the meantime, I have procured the copies of the entire correspondence, including that, and what I wanted to do was to exhibit to the Governor the entire correspondence, so as to enable him to answer the question—the entire question, and not a partial view of it. He cannot stop in the middle of the question and begin something new.

The Chair: Let's—

General Crane: Let's go to the record and see just what was being said at the time we adjourned, I think that is the better plan.

The Chair: I don't think there is any necessity for that. I do not think the Chair misunderstands the state of the record; it is practically as stated by both of you counsel; I do not see much difference between you.

General Crane: The difficulty is—

The Chair: The witness was undertaking to give his explanation, to state his reasons for taking that attitude towards Dr. Battle, and his reasons for it, in the statement of that attitude, and in the course of that answer a letter was referred to, and objection was made to the witness' testifying to the contents of the letter.

General Crane: Yes. Well, now, if your Honor will pardon me, your Honor is entirely right, that the letter referred to was the letter of the Attorney General, and Senator Page suggested that we get that letter, and we undertook to get it at noon. Now, they are beginning on an entirely new tack, they are showing the Governor some letters somebody had written, as I understand it.

Mr. Hanger: There never was a bigger mistake on earth.

General Crane: Well, what letters do you refer to then, what is the letter you have there?

Mr. Hanger: A copy of the Attorney General's letter.

General Crane: But what I am asking, I am asking the Court now, let us see the letter exhibited to me—I thought it was written by somebody else—let me see it?

The Witness: No, sir.

Mr. Hanger: Just a moment. We insist that this witness has the right to continue to make the explanation, which is a better statement of his attitude in the matter.

General Crane: I will just cut this correspondence short by letting them read that letter now; that is all right, it is a copy, but with the understanding that we will be allowed to read the copies of the other letters.

Mr. Hanger: No, sir, that will be settled when we get to it.

General Crane: Then, we will wait until we get the original.

Mr. Hanger: It hasn't any place here in the answer of this witness, as far as the question propounded—

General Crane: Well, I shall object to that copy being offered then, unless all the copies are offered. I am willing for copies of the entire correspondence between Governor Ferguson and the Board of Regents, Dr. Battle and the Attorney General, I am willing for it all to come in as printed here and verified; but to admit one copy and deny the admission of the others, and counsel has already served notice on me that he will not admit these copies I have here, if he adheres to that, now, if he insists on that, I make the objection.

Mr. Hanger: I don't make any objection about the copies, I make objection as to the relevancy and pertinency, whether or not they are admissible here at any time. If they are, all right.

The Chair: Let's get that, when we read it. He makes no question about the copies.

General Crane: Well, now, you say you make no question about the copies, but you know you told me across the table you were going to insist on the original.

Mr. Hanger: Yes.

Senator Bee: Mr. President, may I ask, as a member of the Court, what this letter that is now to be read—what relevancy or place it has with reference to the testimony, what place—

Mr. Hanger: If I may explain, it is a letter from Dr. Battle to the Attorney General, asking his opinion about the right of the Board of Regents to make disposition of the funds independent of the itemization in the bill.

The Witness: No.

Senator Bee: I understand that the Governor's statement is that he formed his certain judgments upon that letter.

The Chair: Upon that letter and other things.

Senator Bee: Yes, sir. Then, the only question that we have now is this letter, and then the Governor's statement following it, unless the other matters arrive?

The Chair: Yes, that is the question.

General Crane: I have no objection to his reading the letter with the understanding that no objection will be made to those other letters on account that they are not originals.

The Chair: Yes, no objection will be made on that account.

General Crane: All right, Governor, you may proceed to read.

A. This letter that we were talking about this morning, that is a true copy of the letter.

Mr. Hanger: A little louder, Governor.

A. This is a true copy of the letter from the Attorney General, containing a true copy of Dr. Battle's letter to the Attorney General (reading):

"July 26, 1915.

"Dr. W. J. Battle,
"Acting President of the University of Texas,

"Austin, Texas.
"Dear Sir: Under date of the 23rd inst. you wrote this department as follows"—

Mr. Hanger: Would you like for me to read that, so as to relieve you—you have been talking so much?

A. All right, if you like.

(Mr. Hanger thereupon read the following letter to wit):

"Under date of the 23rd inst. you wrote this department as follows:

"I beg to ask your interpretation of the following proviso in the University appropriation bill for the next biennium: For the maintenance, support and direction of the University of Texas, including the Medical Department at Galveston, for the two years beginning September 1, 1915, and ending August 31, 1917, from the general revenue, such changes and substitutions within the total of the following items for the University as the Regents may find necessary. The Board of Regents have understood'"—

Mr. Hanger: Now, that is—may I explain—that is all of the sub-quotation from the bill. Thus continuing Dr. Battle's letter:

"The Board of Regents have understood that this proviso confers the power to make changes and substitutions within the limits of the total yearly appropriation of \$711,662.16. Is this view correct? I submit that it is, for the following reasons:

"First, the intent of the proviso is undoubtedly to give the Board the power to use the appropriation as they deem most to the advantage of the University. To limit the permission to make changes and substitutions to subdivisions of the appropriation would seriously curtail it, and in so far defeat its purpose.

"Second, the construction of the subdivision is so careless, as to show that they were made only for convenience, and not from any wish to determine the limits of the expenditures for various purposes."

A Senator: Whose letter is this? The Attorney General's?

Mr. Hanger: No, this is Dr. Battle's letter to the Attorney General (resuming reading):

"Third, the use of the word 'total' in the singular, instead of in the plural, looks to the whole yearly appropriation instead of to its several subdivisions.

"Fourth, heretofore appropriations for the University have been in an unrestricted yearly sum, which the Regents were authorized to expend at their discretion. The insertion of the proviso in question in this year's itemized bill, seems to me to preserve to the Board the power hitherto exercised.

"Fifth, it is hard to see that any good whatever would be accomplished by restricting the power to make changes to the subdivisions of the appropriation.

"Sixth, if the power to make changes is restricted to the subdivisions of the appropriation, it will not only hamper the Board in the exercise of their discretion, but will involve vexatious and useless book-keeping complications in the office of the Comptroller and of the University Auditor."

Mr. Hanger: That is the end of Dr. Battle's letter. Now, the Attorney General says, replying to same (reading):

"Beg to say that I concur in the construction you have placed upon the language of the appropriation bill, and believe your analysis is as

satisfactory, if not more so, than any analysis that I could write, and hence I adopt the same and beg to concur in your conclusion.

"Yours very truly,

"B. F. Looney,
Attorney General."

Q. (By General Crane, resuming): Now, Governor, that letter of Dr. Battle to the Attorney General, and the answer thereto, was in the middle of the correspondence that you and he and the Board of Regents had, with respect to this matter, wasn't it?

A. No, not in the middle.

Q. Well, what—

Mr. Hanger: I would like to ask, have you finished answering the question?

The Witness: I have not.

Mr. Hanger: We insist that the witness be allowed to answer.

The Chair: The witness has the right, in the view of the Chair, to conclude his answer to the other question before being further interrogated?

General Crane: Well, I thought he had finished, and had read the letter and had stated the facts.

Mr. Hanger: We adjourned, that he might get the budget, as well as the letter.

Q. Well, have you got the budget?

A. Yes, sir.

Q. All right?

A. As I stated this morning, when I went to Temple I got the budget from Dr. McReynolds, which I here exhibit to the Committee, and I brought it back to Austin with me, and—

The Chair: Pardon the interruption, gentlemen, I see General Looney has some copies there, I expect you won't need them.

General Crane (to General Looney): We have used them, General, already.

Mr. Hanger: We have used the copies already. Thank you very much, much obliged.

The Chair: All right.

General Crane: Yes, I had asked him to bring them up, Mr. Chairman.

The Chair: Proceed.

A. (Resuming.) And this budget which I had received from Dr. McReynolds I brought back to Austin and compared it with the Legislative appropriation bill, and upon inspection of both of them it appears that they differ in many, many, many different instances, and I compared—or I had prepared the deadly parallel upon the two appropriation bills, and which I have here for the inspection of the Court, and it shows that salaries were raised in many, many material instances, different from those.

General Crane: Well, we object to his stating conclusions. We will take the exhibits that he makes,

A. All right.

Q. You have had the parallel, we will just offer that in evidence along with the other.

The Chair: The witness may point out.

General Crane: As a part of the cross-examination.

Senator Bee: Mr. President, may I ask counsel if this budget spoken of is based on the appropriation bill passed by the Thirty-fourth Legislature?

General Crane: I presume so. It is the action of the Board of Regents.

Senator Bee: After they had passed the appropriation bill?

General Crane: After they had passed the appropriation bill, and the correspondence is all here.

A. (Resuming.) And it was after Dr. Battle had told me and assured me, and on the faith of which promise I approved the appropriation bill, that the money would be spent just as they told the people—or Legislature—that it would be spent, and just as it was appropriated. By an inspection of the two, a comparison of the two budgets, the Legislative appropriation bill and the budget which I exhibit here, it shows they differ in many different particulars.

Q. Just state in what places—parts, please?

A. All right. Under the head of "Department of Architecture"—or "Department of Engineering," the item of architecture in the University budget here was \$10,600. They had told the Legislature that they only wanted \$8430, for that item; under the item of "Mechanical," they told—the University budget was \$6860, they asked the Legislature to give them \$8360; under the head of "Law Department," the University budget was \$35,525, and under the Legislative appropriation bill it was only \$28,240; under the head of "Extension Department," in the directors—the salary of the Director, in the

Director's office, the University budget was \$6600; the legislative appropriation bill was \$4350, an increase of \$2250; under the head of "College of Arts," and under the sub-head of "Business Training," the University budget for a professor provided \$3400, under the Legislative appropriation bill it was \$1100, an increase in salary of \$2300.

Under the head of—further, under the head of "College of Arts," and under the sub-head of "Sociology," the salary of the Professor of Sociology under the Legislative appropriation bill was \$3250 a year. It is omitted entirely in the University budget. The Professor of Clinical Psychology in the Legislative appropriation bill was \$2500 a year; under the University budget it was omitted entirely.

Senator McNealus: Mr. President.

The Chair: The Senator from Dallas.

Senator McNealus: Will the Governor please be good enough to state those two items that were omitted entirely? I didn't understand them?

Mr. Hanger: State them again, Governor.

A. Yes, sir. The Professor of Sociology, the Legislature appropriated for his salary \$3250; they were omitted from the University budget entirely—it was omitted from the University budget entirely. The Professor of Clinical Psychology in the Legislative appropriation was \$2500 a year, it was omitted from the University budget entirely.

Senator Hudspeth: You mean, Governor, the University budget of this year?

A. No, sir, for that year, 1915-1916.

Senator McNealus: Mr. President, I didn't know but what it meant the School of Journalism. (Laughter.)

The Chair: Let the witness proceed.

A. Under the head of "Administration"—

Senator Hudspeth (interrupting): Mr. President, I wish to get the matter clear; I don't think this calls for a written question. You state, Governor, that it was omitted from the University budget. You mean the budget that was presented to the Legislature?

A. No, sir, the budget that they presented to the Board of Regents.

Senator Hudspeth: Oh, to the Board of Regents?

A. Yes, sir.

The Chair: One is the Regent's budget, if I may be permitted, and the other is the budget presented to the Legislature?

Senator Hudspeth: Yes.

A. Under the head of "Additional Items," the Legislative appropriation contained, "For elevator power, \$400; Engineering lectures, \$150; Engineering library, \$550; Equipment for K. Hall, \$1500; and General equipment, \$7750; Heating system, \$3100; Honorarium, \$150; Manual training equipment and supplies, \$1300; Workshop, \$800; Zoology in the Summer School, \$400; Total, \$15,900." They were omitted from the University budget entirely. Under the head of "Extension Department," and under the sub-head of "Director's Office," there was a total of \$4350 itemized for Secretary of Director, for printing, traveling expenses, stamps and stationery, equipment, country life conference. Under the University budget the amount was raised to \$6600, and the itemization was omitted. Under the head of "Division of Correspondence," or "Instruction," there was a total of \$6900 in the Legislative appropriation bill for the head of the Division Registrar, Stenographer, Correspondence instruction, clerical and stenographic help, supply register, July and August printing, stamps and stationery, group study libraries, travelling expenses of group study institute, and miscellaneous. Under the University budget the amount was raised to \$7990, and there was no itemization of the amount. Under the head of Division of Home Welfare, the Legislative appropriation was \$7032.50. For Adjunct Professor of Domestic Economy and Lecturer—Lecturer on Home Welfare, Stenographer, Printing, Traveling Expenses, Equipment, Home Economic Week, stamps and stationery, and miscellaneous. Under the University budget the amount was raised to \$7332 and itemization was omitted. Further, under the head of Extension Department and the subdivision of Public School Improvement, the Legislative appropriation was \$10,400 for head of the division, lecturer of rural schools, ditto, clerical and stenographic help, travelling expenses, exhibit fund, print-

ing, stamps and stationery, equipment and miscellaneous. Under the University budget the amount was raised to \$12,660, and itemization was omitted.

Under the division of Public Discussion, the legislative appropriation was \$7950 for the director interscholastic athletics, stenographer, package librarian, bulletin and journal clerk, printing, travelling expenses, stamps and stationery; annual meeting University interscholastic league, package library, equipment, and miscellaneous. Under the University appropriation—under the University budget the amount was reduced to \$7800, but the itemization was omitted.

Those are some of the material changes as appears from this—there were some other slight changes and there were quite a number of different changes, some increasing and some decreasing the legislative appropriation, and some increasing and some decreasing the University budget. After getting this information—

Senator Bee (Interrupting): Oh, Mr. President, right at this time I would like to ask this question—it is pertinent to the statement just made.

The Chair: Yes. Is there any objection by counsel?

General Crane: No.

Mr. Hanger: No.

Senator Bee: I think right in connection with that statement—

General Crane: That is all right, Mr. Chairman.

The Chair: He was answering one question and they objected awhile ago to his being asked another question.

Senator Bee: The reason I ask it at this time is because he was going into an explanation of Dr. Battle's attitude, and I wanted this on the financial part.

The Chair: This is a question by Senator Bee, Governor.

A. Yes, sir.

The Chair (reading): "What was the total amount of the appropriation made by the Thirty-fourth Legislature per year?" That is the first part of it?

A. It appears here that that legislative appropriation from this data for the Main University was \$638,957.16.

The Chair (reading): The second part of the question: "What is the

total amount of the budget prepared by the Board of Regents during the same year?"

A. \$634,476.84.

The Chair: All right. Proceed.

Q. (By General Crane, resuming): In the same connection, how much was turned back into the Treasury unexpended?

A. I don't—my data don't disclose it.

The Chair: Just a moment, now.

General Crane: Well, go ahead.

The Chair: I have another question here.

General Crane: Another question?

The Chair: One of the Senators wants to ask him in this connection, if there is no objection (reading): "You have stated that certain moneys were appropriated by the Thirty-fourth Legislature for specific purposes, were omitted from the Regents' budget and not used for these purposes. What became of this money? For what purposes, if any, was the money used, and what was the aggregate sum? Was this money used for other purposes than that for which it was appropriated by the Legislature, and if so, by what authority were the changes made?" By Senator Page.

A. It appears that the money that was not used, was used for—generally for the raise of salaries of other professors—one item that I especially call attention to there was where they told the Legislature they wanted \$1100 for Professor of Business Training; the University budget shows that they gave him \$3400 a year, an increase of \$2300 more raise in salary, and \$2300 more than they told the Legislature they were going to give him.

The Chair: This question by Senator Bee, the same question.

General Crane: Mr. Chairman, the latter part of the question was not answered, I think.

Senator Page: About the amount, I don't know whether the Governor has figured that?

A. I haven't figured here what the amounts were.

Senator Page: Well, you might pass that now.

The Chair: Any other part of that question of Senator Page that was not answered?

Senator Page: No, sir. What I wanted to find out was by what authority the money was appropriated

to pay certain salary as Professor of Sociology, how that money could be applied to pay anything else, I wanted to find out about that, I didn't know.

Mr. Harris: Let the Governor answer it, if he wants to.

A. The contention was—and they were backed up by the Attorney General—that under the provision of the bill providing for substitutions and changes, that that took into consideration all the itemization, and that they in fact got a lump sum appropriation to do what they pleased with it.

Senator Page: That is what I wanted to find out, by what authority they did that.

A. Well, that was their authority.

Mr. Harris: We have sent for the bill, Senator.

The Chair: Here is a question by Senator Bee (reading): "What is the difference in the legislative appropriation and the budget prepared by the Board of Regents?"

A. It amounts here to about \$14,000.

Senator Hudspeth: How much—I didn't get that?

A. About \$14,000.

General Crane: Well, what was that—reduced or increased?

A. It is increased by about \$14,964.66.

The Chair: All right, proceed, if you are not through with the answer, proceed with the explanation that you were making.

A. Yes, I am going to make it. Now, after receiving that information, and reading that information, that letter written by Dr. Battle, and calling in mind his earnest and often repeated statement to me that he was going to spend the money just like the people—just like he told the Legislature he was going to spend it, and that he was going to respect the itemization made by the Legislature, which request the democratic platform passed at El Paso, after seeing the position that he took in that matter, that the items were carelessly drawn, that they were only put in there for convenience, considering the fact that he meant to say now they were just put in there for the convenience, to deceive the Governor and Legislature, and that is the main objection I had to Dr. Battle, and I so wrote every member of the Board of Regents. I have a copy

of the letter here which I will read:

"Dear Mr. Harrell"—This same letter was written to every member of the Board of Regents—"I herewith enclose you clipping from the Austin Statesman which is self-explanatory, of a controversy between President Battle of the University and the Comptroller."

Q. Governor, pardon me, that is not the first letter you wrote, though, what is the date of that?

A. August 18th, 1915.

Q. You wrote Fred W. Cook, chairman of the Board, of date June 11th, 1915, didn't you, on the same subject?

A. Yes, sir, here is that letter.

Q. All right, suppose we take them in consecutive order.

A. (Reading):

June 11, 1915:

Hon. Fred W. Cook, Chairman,
- Board of Regents, University of
of Texas,
San Antonio, Texas.

Dear Sir: I have approved officially every item voted by the Texas Legislature for education in all branches, including the State University.

There are certain items and matters pertaining to the University that are not exactly in keeping with my personal views. But realizing the necessity of a close and friendly relation between this department and your Board, composed of patriotic Texans, in whose integrity I have the utmost confidence, I thought it would not be best to exercise the drastic powers of the veto, but approved the appropriation, and will content myself with calling your attention to certain matters, which I think should have your serious consideration.

I think entirely too much money is being spent in what is known as the Extension Department of the University. It appears to me that there is an unnecessary amount of money expended under the head of visiting schools. I trust you will look into this department and eliminate from your expenditures that part of the Extension Department which is a duplication of other parts of the public service; especially that department under the supervision of the Superintendent of Public Instruction.

I notice in the budget the item of Instructor in Business Training, at \$1,250 per year. This is an under-

pay or overpay or a wrong pay, I cannot tell which. I hope you will look into this item carefully.

I doubt very much the expediency of the expenditure by your institution in maintaining the Department of the School of Journalism. My personal view is that it is a waste of public money.

I am amazed at the large number of assistants to the different teachers in different departments, who draw very small salaries. Please examine this branch of the service carefully with a view to ascertaining whether this is a student loan fund in disguise; if it is, it ought to be called by the right name.

The expenditure of \$1,500 a year for a Resident Architect I think you will find of doubtful value, and I believe can be eliminated.

The item of \$1,500 for an assistant to the Business Manager I am convinced is wholly unnecessary, and I am sure you can find this amount can be saved.

After conference with many people connected with the University I feel sure that the place of Secretary to the University at a salary of \$2,700 a year is wrong in principle, and ought to be dispensed with. I am informed by President Battle that the duties of the office are confined to visiting the alumni. The State of Texas, having given the young man or young lady an education free of charge, ought to expect loyalty and co-operation without the necessity of having a paid agent to keep enthusiasm aroused.

In this connection I want to call your special attention to the item of \$2,000, appearing in your budget as compensation for the Assistant Secretary to the University. I am informed by President Battle that in reality there was no intention of employing such a man, but that it is intended to use the money for some other purpose. I regretted to receive this information. To say the least, it exhibited a want of candor and frankness between those making up the budget and the members of the Legislature, who were asked to appropriate this money. I hope that you will eliminate from your expenditures the item of \$2,700 for the Secretary to the University, the \$2,000 for the Assistant Secretary to the University, and the item of \$2,000 for each year

for traveling expenses for those two places.

The item of \$600 for the Business Manager's expenses appears to me to be excessive.

I realized that the work which your Board is performing is one of little compensation, so far as dollars and cents are concerned, but I am sure that I am not transcending my powers when I undertake to speak for the people of Texas, and say that they much appreciate your unselfish efforts to make the University a credit to the State, and if in the future you can find it possible to give even a little more time to your duties as will cause them to feel their money is being wisely and economically expended, that you will further receive the thanks of a grateful people.

I desire personally to have you know that at all times you are free to call upon me officially or otherwise whenever I can serve the best interest of the University, and thanking you in advance for that prompt and due consideration, which I am sure you will give to the matter which I have mentioned, I am,

Yours truly,

Governor of Texas.

Q. Now, Dr. Battle made reply to that didn't he?

A. No, sir, I don't think he did. After I had read the letter—

Q. Wait, one minute, let me call your attention to the fact if you haven't the letter there now.

A. That letter was written to the Board of Pardons, not to Dr. Battle.

Q. I know, go ahead, go ahead, we will get to this letter.

A. After reading the statement made by Dr. Battle, claiming that the University was one lump sum,—the University appropriation was one lump sum, I wrote to all of the Board of Regents as follows, Mr. Harrell being one of them, this copy which I remember was addressed to Mr. Harrell.

Q. What date was that?

A. August 18, 1915.

Q. All right.

(The witness thereupon read the letter as follows):

August 18, 1915.

Hon. David Harrell,
Member of Board of Regents,
State University,
Austin, Texas.

Dear Mr. Harrell:

I herewith enclose clipping from the Austin Statesman, which is self-explanatory of the controversy between President Battle, of the University, and the Comptroller. The Comptroller is to be highly commended for his action in this matter.

I am certainly disappointed at this action on the part of Battle, and cannot believe for a minute that he represents the Board of Regents in this matter.

In subdivision 2 of his opinion Battle says that, "the construction of the subdivisions is so careless as to show they were made only for convenience." If the construction was careless, then Battle must assume the responsibility, because the subdivisions were passed just as they came from the University, and drawn in accordance with their express wishes; and after they were passed by the Legislature they were approved by me after long conference with Battle, in which he stated repeatedly that the items had been made by the University authorities after much careful consideration of their actual needs. Notwithstanding he admitted in this conversation that he had put items in the bill that he did not intend to use for the purposes stated. I, in the interest of harmony, and for the good of higher education, as you know, approved the bill. Now he comes along and says in effect that the whole thing was done for the purpose of misleading the Legislature and the Governor, and to use his own language, "The bill was drawn not from any wish to determine the limits of expenditures for various purposes."

I submit in all candor that this is sharp practice, in a most culpable degree, and it is wholly unbecoming of the rank and station of a president of the University of the great State of Texas.

Again Battle says in subdivision 4 of his argument that appropriations have been heretofore made in unrestricted yearly sums, which the Regents were authorized to expend at their discretion. I submit that this is a deliberate mis-statement. You will recall that on account of just such conditions as I now seek to prevent, the democratic platform passed

at El Paso provided for an itemized statement of expenditures of all institutions, and the bill was passed in its present form to carry out that provision. I submit that no president of any University in Texas ought ever to put himself above the democratic party of Texas; and it becomes now a clear issue, whether the University, through its president, shall be permitted to thwart the will of the people, or whether that will must be respected and carried out.

I think my attitude towards education, and especially the University of Texas, would entitle me to more candor and frankness than now is being displayed by President Battle. I do not hesitate to say that he is unworthy of the position which he holds, and should not be allowed in any manner to expend any of the money provided by the Legislature for the maintenance of the University.

In this connection I desire to call your special attention to the need of appointing an auditor of known experience and ability, not heretofore connected with the University in any way, who, in the future, in the absence of the Board of Regents, should carefully scrutinize and see that no voucher is issued or money paid other than in strict accordance with the provisions and terms of the appropriation bill.

In order that we may work for the best interests of the University, I shall kindly request you for an early reply to this communication.

Yours truly,

Governor of Texas.

Q. Now, in answer to that you received a letter of date September 15th, 1915, enclosing Dr. Battle's reply to the Board of Regents, to your letter, didn't you?

A. I think I did, yes, sir.

Q. And this is substantially what it was, isn't it, printed, that was the letter directed to you and this is the enclosure?

A. I assume it is, General, if on your statement it is.

Q. Well, it is said to be.

Mr. Hanger: We don't make any question about the genuineness of it.

General Crane: We offer this as the reply Dr. Battle made to that letter.

"I beg to transmit to you a copy-

of a letter that I am sending to each member of the Board of Regents. I hope that a careful reading of it will serve to remove the misunderstanding under which I think you labor. If there are any points that I have not made clear I shall be glad to confer with you at your convenience."

(Thereupon General Crane read into the record the following letter, in connection with the above):

Austin, Texas, Sept. 11, 1915.

To the Board of Regents of the University of Texas.

Gentlemen:

In his letter to you dated August 18, Governor Ferguson makes charges against me of a very grave character. Without giving me any opportunity of explanation whatever, or even an intimation of what he has in mind, he condemns me unheard, his letter is published, and I am held up to the scorn of the people of Texas, and that, too, at a time when I am in a distant State and cannot make an adequate defense till many days have passed. It is the more imperative that I lay before you a careful examination of his charges and a full statement of the facts as I see them. In your hands rests my good name, to a man of honor a possession far more precious than salary or office.

The essence of the Governor's charge against me is that I sought to override the will of the people, as expressed in the itemization of the University appropriation bill, in order to make unauthorized or arbitrary use of the State's money.

I might with propriety rest the whole case on the statement of the fact that, by the usage of every court in the land, the meaning of a statute is settled by examination of the statute itself; that, following this usage, the Attorney General, elected by the people to be the State's legal adviser and determine such matters as that now at issue, completely vindicates my position; that, under similar circumstances, the Comptroller's office has always heretofore handled the University appropriation as I understood the law now to authorize; but my motives have been attacked, and I must go further.

What I really did was to try to learn the meaning of a law, in order to obey it. I had always supposed the law in question meant one thing;

the Comptroller thought differently; I applied to the Attorney General to decide the matter.

I had no thought of trying to circumvent the Comptroller. About a month before, I had made a request of him, which he referred to the Attorney General, and the Attorney General decided against me. On this new question, having found out through our auditor's office that the Comptroller's view of the law was different from mine, and being sure that he would refer the matter to the Attorney General, anyway, I decided, in order to save time, to go to the Attorney General directly.

Still less did I have any idea of trying to circumvent the Governor. The question being one of the interpretation of a law, it really did not occur to me to take it up with him. Further, his letter of June 11 to you, suggesting changes and omissions in items of the appropriation aggregating more than \$20,000, showed that he recognized the application of the changes and substitutions proviso to every item of the appropriation singly; and, this granted, it would not have been reasonable for me to have assumed that he had any serious objection to other changes that had in view the same economy and efficiency suggested by his letter.

The truth is, that my whole purpose in this matter has been to prevent useless red-tape, friction, and waste of effort; to spend the State's money to better advantage; and to make the University more worthy of the State. At no time have I had any notion of recommending radical changes from the appropriation bill, or any changes at all other than those that varying conditions should from time to time make imperative. If I wanted to, I could not spend a cent without your approval. Besides, I have given the Governor my promise to exercise strict economy everywhere, and I purpose to stand by it.

My letter to the Attorney General reads as follows:

I beg to ask your interpretation of the following proviso in the University appropriation bill for the next biennium:

"For the maintenance, support and direction of the University of Texas, including the Medical Department at Galveston, for the two years beginning September 1, 1915, and ending August 31, 1917, from the gen-

eral revenue, with such changes and substitutions within the total of the following items for the University as the Regents may find necessary."

The Board of Regents have understood that this proviso confers the power to make changes and substitutions within the limits of the total yearly appropriation of \$711,682.16. Is this view correct? I submit that it is, for the following reasons:

(1) The intent of the proviso is undoubtedly to give the Board the power to use the appropriation as they deem most to the advantage of the University. To limit the permission to make changes and substitutions to subdivisions of the appropriation would seriously curtail it, and in so far defeat its purpose.

(2) The construction of the subdivisions is so careless as to show that they were made only for convenience, and not from any wish to determine the limits of expenditure for various purposes.

(3) The use of the word total in the singular instead of in the plural looks to the whole yearly appropriation instead of to its several subdivisions.

(4) Heretofore appropriations for the University have been in an unrestricted yearly sum, which the Regents were authorized to expend at their discretion. The insertion of the proviso in question in this year's itemized bill would seem to be to preserve to the Board the power hitherto exercised.

(5) It is hard to see that any good whatever would be accomplished by restricting the power to make changes to the subdivisions of the appropriation.

(6) If the power to make changes is restricted to the subdivisions of the appropriation, it will not only hamper the Board in the exercise of their discretion, but will involve vexatious and useless book-keeping complications in the office of the Comptroller and of the University Auditor.

To this letter, the Attorney General replies:

"I agree with the construction you have placed upon the language of the appropriation bill, and believe your analysis is as satisfactory, if not more so, than any analysis that I could write, and hence, I adopt the same and beg to concur in your conclusion."

I might have added, as a seventh

argument, that there are direct precedents for what I asked of the Comptroller:

(a) In 1911, though no items are given, the appropriation has a proviso, "Salaries as at present in effect, with such changes as the Regents may deem necessary." The appropriation was entered in a lump sum by the Comptroller, and the Regents made their budgets as they thought the interests of the University demanded.

(b) In 1903, the bill is itemized for the whole University, but carries the following proviso:

"And provided further, that the Board of Regents are authorized to employ any of the teachers and other employees above mentioned at a different salary if practicable or by them deemed expedient, and also to add additional teachers or other employees at salaries to be fixed by the Board of Regents; provided further, that the Board of Regents may modify and adjust the items of expense as conditions demand."

No totals at all are given for the items; yet, evidently acting on the proviso, the Comptroller entered the account for the appropriation in a lump sum for each year, and the Board made such changes in the items as they believed for the good of the University.

I had, of course, no thought of publishing either my letter or the Attorney General's reply. If they were published, it was without my knowledge or approval.

In saying that the Board of Regents understood the proviso to confer the power to make changes and substitutions within the total yearly appropriation, I wrote in perfect good faith. Dr. Mezes so understood it, and so did everybody about the University, as far as I know. That the Board had exercised a like power in 1911-13 and 1913-14 undoubtedly contributed to this understanding. But the fact is, I did not suppose anybody questioned the meaning of the proviso, and it did not occur to me to bring it up for discussion.

Concerning my second argument, the Governor says:

"If the construction was careless, then Battle must assume the responsibility, because the subdivisions were passed just as they came from the University, and drawn in accordance with their express wishes, and

after they were passed by the Legislature they were approved by me after long conference with Battle, in which he stated repeatedly that the items had been made by the University authorities after much careful consideration of their actual needs."

Can the Governor understand that I meant the statement of the items was careless. If he meant that the items of the subdivisions were passed as they came from the University and then were approved by him after conference with me, he is quite right; but, according to my recollection, the grouping was not discussed by us at all; our whole attention was centered on the items.

I did not, however, mean in my letter to the Attorney General that the statement of the items was carelessly made. What I was arguing against was the confining of the permission to make changes in items to the group in which those items are found. For example, I wanted the University to be allowed to reduce or omit items under Current Expenses, in order to make necessary adjustments under salaries; that is to say, to economize in one place, and use the money saved where it was needed more.

To prove that the items in a group were not put in that group and summed up in a subtotal with a view to fixing the limit of expenditure for the general object of that group, I pointed out that the grouping was carelessly done. In the bill as passed, the first group is Salaries, Main University and Medical Department together; the second and third, Schools and Laboratories, separately, for the two departments; the fourth, Current Expenses, for the whole University together; the fifth, the Bureau of Economic Geology and Technology; the sixth, the Department of Extension and Summer Schools (which have no connection), combined. This grouping is not that of the draft submitted by me for the convenience of the legislative committees. There, Salaries, Schools and Laboratories, and Current Expenses are grouped, in each case, for the Main University and the Medical Department together, and the Department of Extension and Summer Schools are grouped separately. (Copies of the draft submitted by me and of the bill as passed are in

the hands of the chairman of the board.)

And is not my argument valid. Assuming as beyond dispute the permission to change single items, is it likely that the committees adopted their grouping with the intention of limiting the expenditure in any one group to the amount the bill carried for that group, except perhaps in the case of the Bureau of Economic Geology and Technology, which deals with a definite line of work.

The Governor continues:

"Notwithstanding he admitted in this conversation that he had put items in the bill that he did not intend to use for the purposes stated, I, in the interest of harmony and for the good of higher education, as you know, approved the bill."

The Governor can refer here only to the item for Assistant Secretary of the Faculty, \$2000, about which he wrote you on June 11. As to this, I can hardly do better than repeat what I wrote you after seeing the Governor's letter:

"The position was included in the budget for 1914-15; but, after Mr. Bedicheck, who was expected to fill it, was chosen secretary of the Hogg Organization and made the University his headquarters, it was not thought necessary to fill the assistant secretaryship for this year. An allowance having been made for it in the budget, it went to the Legislature along with all the other items of the budget adopted for 1914-15. You will remember that Dr. Mezes did not attempt to forecast in our request to the Legislature the detailed budget for 1915-16, but simply asked the Legislature to provide for the budget of 1914-1915, with permission to make changes that the Board might find necessary. Neither Dr. Mezes nor I, however, had any intention at first of leaving the position unfilled for the year 1915-16; and only when I began to make up the (new) budget, at the end of April of this year, did I reach the conclusion that we could expend the money to better advantage otherwise. The Governor is quite wrong in his implication that we wilfully asked the Legislature for something we did not want."

The Governor continues:

"Now he comes along and says in effect that the whole thing was done for the purpose of misleading:

the Legislature and the Governor, and to use his own language, 'The bill was drawn not from any wish to determine the limits of expenditures for various purposes.' I submit in all candor that this is sharp practice in a most culpable degree, and is wholly 'unbecoming of the rank and station of a president of the University of the great State of Texas.'

The Governor wholly misunderstands the situation. Of course, he does not intentionally misquote me, but I did not say that "the bill was drawn from any wish to determine the limits of expenditure for various purposes." What I said was: "The construction of the subdivisions is so careless as to show that they were made only for convenience, and not from any wish to determine the limit of expenditure for various purposes."

What I meant I have explained above.

When the appropriation bill came to the Governor for signature, I naturally offered myself for question on any point on which he might have doubts. At our conference on the subject, it developed that there were many such points, so many in fact that it was not then possible to explain them all, even though the interview lasted nearly two hours. In the endeavor to make clear the University's needs, I had to do most of the talking, and made of course many statements. I was not conscious then, and am not conscious now, of having made any mis-statements; of course, I did not try to mislead him in the slightest degree. If he thinks he was misled, it is perhaps because apparently we carried on the conversation with opposite prepossessions on two vitally important points. To me, as plainly stated in the Regents' published recommendations (Sixteenth Biennial Report, pp. 2, 4, 7 and 65), the itemization contained in the bill was that of the current year, and would necessarily have to be altered to adapt it to the needs of the next two years. In the next place, it had not occurred to me for a moment that there could be any serious question that the changes and substitutions proviso applied to the whole appropriation without regard to subdivisions; the Governor, on the other hand, seems to have assumed that it applied only to the subdivisions singly.

The Governor continues:

"Again Battle says in Subdivision 4 of his argument that appropriations have been heretofore made in unrestricted yearly sums which the Regents were authorized to expend at their discretion. I submit that this is a deliberate mis-statement."

If what I had said had been untrue, I am sure you, who know me, would acquit me of having made a deliberate mis-statement.

But, the statement is true. The question is one of itemization. If we take the word heretofore in the sense given by Webster, "in time past," the statement is palpably true. Lump sums have been repeatedly appropriated to the University, to be spent at the Regents' discretion (see the appropriation bills for 1913, 1909, 1907, 1905, etc.) If it be insisted that heretofore bear its other sense, "up to now," the statement is still essentially true. I have gone over every University appropriation since the opening of the institution in 1883. Occasionally an appropriation is made for a specific object, but the only approach to an itemized budget is in 1911, 1903 and 1893. In 1911 and 1903, the Regents were given permission to make changes, the appropriations were entered in lump sums by the Comptroller, and the Regents made their budgets as they thought the interests of the University demanded. In 1903, for the Main University three specific appropriations are made, but no items are given for the general appropriation; for the Medical Department there is a lump sum, "For salaries of professors, \$21,800," and eight other amounts for specific objects.

The Governor continues:

"You will recall that on account of just such condition as I now seek to prevent, the democratic platform passed at El Paso provided for an itemized statement of expenditures of all institutions, and the bill was passed in its present form to carry out that provision."

The El Paso platform does, indeed, call for itemization of appropriations, but it was certainly not the intention of the democratic convention to demand something that could be accomplished only at the expense of economy and efficiency. On the contrary, the El Paso platform says explicitly: "We are grat-

ified at the rapidly growing demand for higher education, and pledge the party to furnish to the young men and women of Texas facilities and opportunities not inferior to those offered by any other State."

Now, no man or body of men can conceivably determine for the first year of the biennium a year in advance, still less for the second year two years in advance, exactly what will be needed by the University. The interests of its nearly four thousand students, increasing lately up to the present war year at the rate of more than ten per cent each year, cannot possibly be worked out exactly so long beforehand, nor can the contingencies of the future be foreseen. No budget of any size—that of the University for the current year totals more than \$700,000—is ever carried out in full, even for a single year. Some classes are unexpectedly large, and a new instructor is needed, or additional equipment. A professor dies or resigns, and, if another is not found for whom the same rank and salary are appropriate, it is desirable either to pay more and secure a stronger man, or to save money by employing a man of less attainment at a less salary. A valued member of the staff is called to another institution at a higher salary, and, unless his salary can be raised here, the University may lose him. In such cases, readjustments are imperative. A rigidly itemized budget simply cannot be maintained without loss of efficiency. Under rigid itemization, no advantage can be taken of unforeseen opportunity, no profit made from experience, no gain got from unexpected chance for economy. So far as my knowledge goes, there is not a State in the Union that insists on a rigid itemization in the appropriation for its university.

These facts it is clear the Governor recognizes, for he says: "The bill was passed in its present form to carry out that provision (i. e., for itemization);" and in its present form, the bill contains the proviso, "With such changes and substitutions within the total of the following items for the University as the Regents may find necessary." The Governor's position and mine, therefore, do not seem to be very far apart. The difference is one of degree.

The Governor continues:

"I submit that no president of any university of Texas ought ever to put himself above the democratic party of Texas, and it becomes now a clear issue whether the University through its president, shall be permitted to thwart the will of the people or whether that will must be respected and carried out."

As I cannot spend a cent of the University's money without your approval, I do not see how I can hope to carry out this design; but let that pass. The fact is that no idea of attempting to do anything whatsoever against the will of the people of Texas has ever entered my mind.

The charge could just as well be lodged against anybody else who helped enact into law the provision under discussion. No one concerned, I am sure, has been actuated by any desire to do other than to give the people of Texas adequate returns on the money invested by them. This has always been the aim of the University, and, in order to enable the people to judge their stewardship, the Regents have regularly published in their Biennial Reports (available for the asking) a statement of every expenditure they have made, down to the last cent.

The Governor concludes his charges as follows:

"I think my attitude towards education, and especially the University of Texas, would entitle me to more candor and frankness than now is being displayed by President Battle. I do not hesitate to say that he is unworthy of the position which he holds, and should not be allowed in any manner to expend any of the money provided by the Legislature for the maintenance of the University."

As to my fitness for the presidency, it is not for me to speak. As each of you knows, I have not sought the position, or even suggested a desire for it. In my judgment, the presidency of the University of Texas is an office of such a nature that it ought not to be the object of candidacy by anybody under any circumstances.

As to the charge of lack of candor, the preceding discussion, with an appeal to the reputation I have borne, might suffice; yet perhaps further light may be found in an account of the genesis and passage

of the appropriation bill and of my connection therewith.

Your biennial report of the condition of the University and your recommendation to the Legislature were adopted in October, 1914, before Dr. Mezes had resigned, and published in December before I took office as Acting President. With the formulation of the report I had nothing to do beyond suggesting a few corrections as to facts and a few improvements in style. As to the recommendations, I was not consulted in any way whatever.

Of the report and recommendation, an early copy was sent to the Governor, and, before the Legislature met, one to each member of both Senate and House. After the session began, a second copy was laid on each member's desk. At my hearing before the Appropriations Committee of the House, a third copy was put into the hands of every member present. The first copy to each legislator was accompanied by a letter from me calling special attention to the recommendations, and giving the page reference where they might be found. This fact is important, because it shows that I took pains to make sure that every member should read the recommendations and understand what they meant.

As to the next biennial appropriations, the recommendations read as follows:

General Crane: Mr. Clerk, I am going to ask you to read the rest of this.

The Chair: The Secretary will read.

General Crane: "Recommendations in brief," beginning there, and finish it up.

Secretary of Senate (reading):

Recommendations in brief.

1. The running expenses of the University for the present fiscal year, 1914-15, including expenditures for salaries and supplies, but excluding the cost of repairs and temporary buildings, amount to \$713,780.82. Although our student body is increasing annually at a rate exceeding ten per cent, our recommendations, because of the cotton situation, include no increase for the next fiscal year, 1915-16. We do, however, urge an increase for the second year following this, namely, 1916-17, as business will no doubt be at least normal by that time.

To meet running expenses, we re-

commend appropriations or a special tax yielding:

For the fiscal year 1915-16, \$713,780.82.

For the fiscal year 1916-17, \$847,980.82.

Budget for the Main University and Medical Branch.

A.

Provisions for running expenses:

Running expenses for 1914-15, including full 1915-16, 1916-17 support of Summer Schools (See Exhibit F, page 65, for items)\$713,780.82 \$713,780.82

Additions to present running expenses recommended later for second year:

More teachers—

In present subjects \$ 49,700.00

In new subjects 32,100.00

Schools and Laboratories 17,435.00

Current Expenses 19,975.00

Student Labor and Loan Fund 10,000.00

Summer Schools 5,000.00

Total recom-

mended\$713,780.82 \$847,980.82

The reason why a budget especially intended for 1915-16 was not recommended is that, during the fall of 1914, Dr. Mezes was detained abroad by war conditions so long that it was not practicable for him to work out a budget for the next biennium in time for the meeting of the board at which recommendations to the Legislature must be adopted. The board, therefore, decided to ask the Legislature to enact for 1915-16 the budget for 1914-15 (which had been prepared with much care), and for 1916-17 the same budget with additions to provide for expected increase in attendance, reliance being placed on the permission heretofore readily granted to make such changes as would adapt them to the needs of

the new years. The lines of expenditure would be fully laid down, but the details could be altered as demanded by circumstances. As the board well knows, there was no concealment or subterfuge whatever about the plan; no thought whatever of taking advantage of the permission to make changes in order to accomplish purposes that could not in advance bear the light of day.

As the officer of the board, bound to obey their instructions, it was plainly incumbent on me to promote, to the best of my ability, the carrying out of recommendations without change. Accordingly, with a view to saving the Senate and House Appropriation Committee trouble, I caused the recommendation to be neostyled and supplied copies to the secretaries of the two committees, so that each member might have one. In the arrangement of items in the language of the proviso allowing changes and substitutions, I followed exactly the style of the bill sent to conference by the House in the Thirty-third Legislature.

Senator Bailey: Mr. President.

The Chair: The Senator from De Witt.

Senator Bailey: Might I be permitted to ask what issue raised by the charges here of impeachment and the answer of this Respondent, all this is material to—this letter from Dr. Battle here. I don't want to break into the presentation of the matter by counsel, but we are taking up a great deal of time here, it seems to me.

General Crane: We have nearly finished that point, Senator, we have nearly finished that point. It was made necessary by some letters introduced.

Senator Bailey: I am glad you have, General.

General Crane: Yes, sir; so am I.

The Chair: The Secretary will proceed with the reading of the letter.

The Secretary (continues reading):

This draft, including the proviso, served as the basis of both the Wagstaff-Cowell bill and the two committee substitute bills. In the Wagstaff-Cowell bill, very few changes were made in the items for the first year, a great many in those for the second, and the position of the subtotals was in part shifted. The committee

substitute bills included all the items. The changes and substitutions proviso is found at the head of the items in every bill carrying the University appropriation that appeared in either House, as copies in the hands of the chairman of the board will show. The statement made in some of the newspapers that it was added in conference at the end of the items is without foundation.

I appeared before the House Committee on Appropriations twice, the first time for nearly two hours. In the course of my discussion, I called pointedly to the attention of the committee that the budget before them was that for the current year, and the committee corroborated my statement by saying that they had compared the salary list with the vouchers in the Comptroller's office and found it correct.

When the committee substitute bill came before the House, the changes and substitutions proviso was attacked, on the ground that it nullified the itemization; and, the question having come up early in the morning, when the attendance was yet light, the proviso was voted out by a small majority. Later, when objection was made to the same proviso in the A. and M. section of the bill, the motion to strike it out was defeated. Naturally, I was anxious that the University should not be deprived of the opportunity for economy and efficiency offered by the proviso; and, on talking the matter over with Chairman Wagstaff and Floor Leader Wortham, I was assured by both that there would be no difficulty in getting the proviso restored in conference committee, because it was plainly essential to the welfare of the University. Later, after the final defeat of the committee substitute bill, when the University appropriation again came up in the Wagstaff-Cowell bill, the changes and substitutions proviso was once more attacked on the same ground as before; but this time, after a warm debate, the House sustained it.

Of the passage of the appropriation through the Senate, there is not much to say. I had several conferences with Chairman Cowell, but was not called to appear before the Finance Committee. As in the House, both the Cowell-Wagstaff bill and a committee substitute bill, identical with the corresponding House bill, so far as the University is con-

cerned, came before the Senate. In both Houses, the Conference Committee report was adopted with practically no discussion.

When the bill came to the Governor for signature, in conjunction with Professor Potts I had with him the conference which I have already described.

I have written at length in order that any action you may conceive it advisable to take may be based upon consideration of all the facts. I am not conscious of any wrongful act, and I know that nothing wrong has been intended by me. As I stated in the beginning, the Governor has done me a great injustice; but I shall not willingly believe that he consciously and deliberately used his great power to destroy one who, whatever may have been the results of his efforts, has zealously and without selfish ends undertaken to serve Texas and the University. I rather choose to believe that under the stress of his duties and responsibilities, the Governor failed to grasp all the facts of a complex situation, and allowed his intensity of feeling to lead him into acting hastily, without taking time for investigation.

Respectfully submitted,
W. J. Battle,
Acting President.

Q. Now, Governor, this appropriation bill on page 84 is the one about which you have been testifying, I am sure—I take it as a matter of law it is?

A. All right—I think so.

General Crane: Now, I offer in evidence the provision of the appropriation bill about which the discussion with Dr. Battle arose. It reads as follows, omitting the enacting clause, and reading the paragraph in the—which makes the explanation referred to (reading):

"For the maintenance, support and direction of the University of Texas, including the Medical Department at Galveston, including the construction of buildings, for the years beginning September 1, 1915, and ending August 31, 1917, of the available University fund, including interest from its bonds, land notes, endowments and donations, all this, and fees collected, all receipts whatsoever, from any source. For the maintenance, support and direction of the University of Texas, including the Medical

Department at Galveston, for the two years beginning September 1, 1915, and ending August 31, 1917, from the general revenue, with such changes and substitutions within the total of the following items for the University, as the Regents may find necessary."

Q. Now, Governor, you knew also, that the University would have some revenue that was not appropriated there, didn't you?

A. I didn't bear that in mind, but as a matter of fact I would have known it.

Q. You would have known that, and therefore, if the budget at any point exceeded the amount of money appropriated by the Legislature, it could safely be assumed, in the absence of anything to the contrary, that that surplus was made up by that money there collected in the ordinary way?

A. Yes, sir.

Q. Yes. Now, isn't it a fact, too, that out of this appropriation made for these years, have you not advised yourself that \$10,000 of it covered—returned back into the Treasury and not expended by the Board of Regents?

A. I understand that some amount was.

Q. You understand that some amount was?

A. Yes, sir.

Q. But the amount you do not recall? You made some objections to some of the professors in the University, particularly Dr. Ellis, because you understood from material offered in evidence here, it seems, that he was earning some money on the outside?

A. Yes, sir.

Q. That he was doing some work besides for the University, besides there, for the University, and the people paying for it?

A. Which I thought was in line with the extension department, the work that he was being paid to do.

Q. Yes. Of course, that is a question of construction?

A. Yes, sir.

Q. He was giving advice as a skilled man to the schools outside, as to sanitation, heating and ventilation, that is what you understood were the services he was rendering, wasn't it?

A. Yes, sir.

Q. And it seemed that he had been paid something for that. Well,

now, the main trouble would be his devoting his attention to outside matters that ought to be given to the public service,—wasn't that your objection?

A. No, my information was, as I said, that he was charging for something for which the people were paying him.

Q. Yes. Well, that was assuming that you understood what was intended to be included in the extension course?

A. Yes, sir, in the line that what I thought the extension department was to carry modern thought and ideas, on all lines, to the people.

Q. Well, wouldn't it be just as bad if he was not giving his attention to his University work, and doing something on the outside, wouldn't it?

A. Well, not quite so bad, I don't think.

Q. Now, you have an Assistant Private Secretary who gives a whole lot of attention to your business?

A. Not much.

Q. Not much?

A. No, sir.

Q. Well, then, you don't give much to it, you say, so it goes unattended to?

A. No, it don't require much, I have got other people in charge of it.

Q. Yes? Well, you heard his statement here?

A. Yes. Did not—

Q. That he attended to nearly all your private business?

A. Yes.

Q. And that he received no salary except such as paid by the State?

A. It don't take twenty minutes a day.

Q. Not twenty minutes a day?

A. No.

Q. No. Well, now, did any of the State officers—any of the State people, employed by the State, ever give any attention to your business,—Mr. Craddock, for instance?

A. Some, yes.

Q. Didn't you send him on trips to your farm, the Bell-Bosque Ranch?

A. Oh, he went up there once or twice, I think.

Q. Didn't you send him on trips to Iowa or some place up North to buy cattle for you?

A. Yes. At the time that I sent him up there to find out generally about this foot and mouth proposition, while he was up there I told him to buy me some cattle.

Q. To buy you some cattle?

A. Yes.

Q. Yes. Well, so that it has been, the people in the employ of the State have frequently given attention to little outside matters, Governor?

A. Oh, yes—yes, sir.

Q. Yes?

A. Yes, sir.

Q. Now, as to whether they should take pay for it, sometimes it becomes a question of positive law, and sometimes it becomes a question of taste and good judgment, doesn't it?

A. Yes, sir.

Q. The Governor is not permitted to practice law?

A. No, sir.

Q. By the Constitution? Now, I believe you state, Governor, that you had not demanded the resignations or tried to control the University Regents in their doing the things you wanted done—the discharge of those professors?

A. Only as stated in the conversation out there with the Board of Regents?

Q. Well, wasn't that in effect this, that if they did not do what you wanted done, that you were going to oust them and put in somebody who would?

A. My statement was as made, that—

Q. Just as made, yes?

A. That if they did not want—were not going to make any efforts to stop those practices out there, that I was going to use the powers vested in me by the Constitution to get people who would.

Q. Yes, get people who would?

A. Yes, sir.

Q. Well, of course, you meant by that you were going to remove them and appoint others?

A. Yes, sir.

Q. That was the meaning? And when you requested the resignation of Dr. Faber, you had him understand the same thing, didn't you?

A. Yes, sir.

Q. And when you requested the resignation of Mr. Butler, you were putting it to him more politely, but nevertheless that is what was meant at the other end of it, wasn't it?

A. I did not request Mr. Butler's resignation.

Q. You heard his testimony here, didn't you?

A. Yes, sir.

Q. And you wanted Mr. Brents out of the way for the same reason, didn't you?

A. I did not request Mr. Brents to resign.

Q. Well, you were advising him that it was his duty to do what you wanted done, didn't you?

A. I advised him that I thought it ought to be done, because it was right that it should be done.

Q. Yes?

A. Not because I wanted, because it was right, and it ought to be done.

Q. Well, didn't you put it on the basis that he had promised you he would do it?

A. I said to him that—after explaining all this controversy to him, why, he then said he would be glad to be appointed Regent, and I had appointed him with that understanding.

Q. With the implication that he had obligated himself to take your side of the controversy?

A. No, not obligated himself, but that he had gone into a controversy with his eyes open, that he knew what was coming up.

General Crane (to the Secretary): Mr. McCall, have you got that bulletin that I gave you to read?

(The Secretary handed the bulletin to General Crane).

Q. Well, you advised him also that he had read the testimony, didn't you?

A. No, he said that he had informed himself.

Q. Had informed himself?

A. Yes, sir—either that he had read the testimony, or that he had fully informed himself about the matter.

Q. Yes, didn't you testify in the House that he said that he had read the testimony?

A. Either that he had read the testimony or had fully informed himself.

Q. Yes, that he had either read the testimony or informed himself?

A. Yes, before that bulletin was published there was a typewritten copy of the proceedings publicly handed out.

Q. Well, when was he appointed, do you remember the date?

A. No, sir, I don't.

Q. Now, then, when you went to appoint men, you selected first, or

among the number you selected, Mr. Love, to whom you were paying a salary as attorney for the Penitentiary Board?

A. Well, I wasn't paying him, the Penitentiary Commission was paying him.

Q. Well, the Penitentiary Commission was paying him, but you were supposed to be the head of the State government, it was done with your consent, wasn't it?

A. Oh, yes, yes, sir.

Q. To be sure, and upon your recommendation, I fancy, wasn't it?

A. Yes, sir.

Q. Yes. Therefore, you were paying a man who had accepted a salary on your recommendation. Dr. Tucker, is that the name, of the Galveston man?

A. Yes, sir.

Q. You appointed him on the recommendation of Dr. Fly, I believe?

A. Yes, sir.

Q. Dr. Fly was fighting all the members of the faculty, and wanted them all removed that you wanted to remove, wasn't he?

A. I don't know that he was fighting—there was a controversy, they were fighting him just about as much as he was fighting them, it was a regular cat and dog affair.

Q. You say they were fighting him?

A. Yes, sir, they were fighting each other.

Q. I know, he was a member of the Board of Regents himself?

A. Yes, sir.

Q. Now, the Medical branch, what particular members of the faculty down there had rendered themselves obnoxious, that the appropriation for the Medical branch at Galveston should be cut off?

A. I think complaint was made against Dr. Thompson and Dr. Carter.

Q. Dr. Thompson and Dr. Carter?

A. Yes, sir.

Q. Now, Dr. Fly made that recommendation—that complaint, didn't he?

A. Well, yes, and one other man, I forgot, now, what his name was.

Q. Yes. Dr. Fly has always lived in Galveston.

A. Yes, sir.

Q. And you knew the feuds that would sometimes grow up between doctors?

A. I have heard of them, yes, sir.

Q. Yes, and suppose that Dr. Fly

was no exception to the general rule?

A. I suppose that they had a doctor's row down there.

Q. Well, didn't you think it was pretty bad policy to endanger the success of the University faculty and the usefulness of the members of the faculty, upon the prejudices of some one particular person in a community, who had umbrage at some one of them?

A. You misunderstand the facts, I never asked for Dr. Thompson and these men to be removed, Dr.—

Q. (Interrupting) I know, but you cut off the appropriation which effectually removed them, they were unable to conduct the Medical University, and that is what I am trying to find out, is why you did it?

A. Oh, that was a different reason, as stated here yesterday, and in the message itself.

Q. Well, the reasons you stated here yesterday, as I recall them,—you can correct me if I am wrong,—was that they, certain members of this faculty, stood in with certain members of this faculty to perpetuate themselves in office?

A. Well, I understood—

Q. Well, now, what evidence did you have of that fact?

A. What Dr. Fly and Dr. Lee and other men told me about it down there.

Q. Just what somebody told you, then?

A. Yes, sir.

Q. Yes. All doctors?

A. All doctors, yes, sir.

Q. Now, John Ward, the man whom you appointed at Temple. Is your personal lawyer, personal counsel, and the bank's lawyer there, isn't he?

A. Yes, sir.

Q. Dr. McReynolds, another man in Temple, was your family physician, I believe, was he, or not?

A. Yes, sir, eye and nose specialist.

Q. Yes, sir. And Mr. John Mathis of Brenham, was the man whom you had employed in several pieces of litigation which you had since last November, wasn't he?

A. In some litigation, I don't—in one or two cases, I think.

Q. One or two cases?

A. Yes, sir.

Q. And did you not consult with each of those men that you appointed as Regents before they were appointed, as to the situation, and what you were trying to accomplish?

A. I did not consult with Mathis and Love, I called them up and told them I wanted to appoint them on the Board.

Q. Well, did you not advise them of what was going on between you and the Board of Regents?

A. No, I talked—called them up over the 'phone.

Q. Over the 'phone?

A. Yes, sir.

Q. Well, now, what did you say to them?

A. I told them that those other men had resigned and I wanted to appoint them, there was going to be an important meeting in Galveston, that I wanted them to go down there and confer with Major Littlefield, and they could explain the matters to them.

Q. They could explain the matters?

A. Yes, sir.

Q. Didn't you explain in detail what should be done?

A. No, sir, I did not.

Q. Is that, now, all that occurred or passed between you and them?

A. Well, all that I can recall, just as far as I can now recall.

Q. You wrote them no letters?

A. No, sir.

Q. And there is no copies of any correspondence between you and them on that?

A. No, sir, no, sir.

Q. Then, Mr. Allen was appointed here by you?

A. Yes, sir.

Q. And he was for a long time exceedingly unsatisfactory, wasn't he?

A. Well, I expect that is correct.

Q. Yes. Now, isn't it a fact that he was conspiring with the other fellows to have this injunction suit which you regarded as so obnoxious, brought, didn't you know that?

A. It seems—it appears now that he knew all about it then.

Q. Knew all about it?

A. Yes, sir. I never knew about it at the time.

Q. It appeared—you never knew that he fell on the neck of John Brady when he learned that it was going to be filed, and told him that he had saved his life?

A. No, I didn't know anything about that.

Q. You did not know anything about that?

A. No, sir.

Q. Now, he did get very friendly

after the judgment was remitted, didn't he?

A. No—not any more than ever.

Q. Wasn't he right pliable, and wasn't he then demanding, or wasn't he demanding that Dr. Vinson be dismissed?

A. No, no, you are mistaken about that—he was always bragging on Vinson.

Q. Well, didn't he go from your office up to Dr. Vinson's about the 5th of June or the 6th of June, with a message, asking him to resign, and then didn't he come back to your office and report there was nothing doing, he didn't succeed?

A. No, he went from my office, and I told him he had better not go, and I told him very plainly not to go, with any proposition from me, that I was not making any.

Q. Well, but he came back and reported to you, didn't he?

A. Yes, and I advised him not to go.

Q. I know about that, that is all right, you advised him not to go. He did not pretend to have a message from you?

A. No, sir.

Q. But didn't he report to you that he could not accomplish anything?

A. No, I think I saw him in two or three days, and there was nothing—

Q. Didn't he come back to your office that afternoon, that evening?

A. No, I don't think that he did. I don't recall that he did.

Q. Now, let me see if we understand your reasons as stated. Now, your direct examination as to why you remitted this judgment of Wilbur Allen's, or—let me see if I gather it—was it because they were all insolvent but Wilbur?

A. No, sir, it was because, as I stated yesterday, that in all probability I didn't think they had given them time enough to get this Mexican back under conditions down in Mexico.

Q. Well, I presume you stated your reasons correctly in your proclamation, didn't you?

Senator Bee: Mr. President, will General Crane permit, if it may be satisfactory both to Respondent and Counsel, to desist for a few minutes, it is so very noisy that it strains your voice to be heard—I just submit that to both counsel and Respondent, if

they would like to wait a few minutes. (Senator Bee's remarks referred to the fact that there was a heavy downpour of rain, creating noise on the roof.)

General Crane: That will be satisfactory to me, I am perfectly willing.

The Chair: Does the Senator from Bexar make a motion?

Senator Bee: I move that the Court rise and recess for ten minutes.

The Chair: The Senator from Bexar moves that the Court rise and recess for a few minutes. All in favor of the motion, signify by saying "Aye," all those opposed, "No." The motion prevails and it is so ordered.

(After a brief recess, the Court again resumed its labors as follows:)

The Chair: The Court will come to order. Mr. Sergeant-at-arms, preserve order. Proceed.

Q. When we closed or the recess was taken, I believe I had asked you what statement you made in your direct testimony here as to the reasons why you remitted that forfeiture as against Wilbur P. Allen and upon whom it worked a hardship. Did you not say that some of them were able to pay, that Allen was able to pay, but that some of the others could not pay?

A. That was what he informed me.

Q. Well, isn't it true that the others were utterly insolvent and Allen was the only solvent man in it?

A. That was my information.

Q. Yes. Now, Governor, you testified in the opening, I believe, that you called this Legislature together in order that the impeachment proceedings might be instituted if desired?

A. I called them together and let them do whatever they wanted to, I said.

Q. Well, you didn't call it for the purpose of giving them an opportunity to prefer impeachment proceedings?

A. I called it for the purpose so they might legally assemble.

Q. And didn't you also deny the authority to institute impeachment proceedings for the reason that you did not submit that in your message, isn't that so?

A. Well, I think that is true yet.

They contended that they did have the authority—

Q. Well, I mean—

A. —and if they were right about it I didn't want to stand in their way.

Q. I understood from your direct testimony that so far as you were concerned you would not dodge the impeachment proceedings?

A. No, sir.

Q. And if they wanted to institute them you rather courted it?

A. Yes, sir.

Q. Now, isn't it true that you have filed in your answer here demurrers to the charges upon the ground that you did not mention the question of impeachment in the call to the Legislature and therefore that this Court had no jurisdiction?

A. Yes, that is true, and whatever right they might get by virtue of a quorum being called by me I wanted them to have it. I didn't want to be in the attitude of running away and preventing a legal assembly of the Legislature. Of course, I didn't mean to surrender any defense I might have to their charges.

Q. Did you not state at Amarillo that you did not intend to call the Legislature together?

A. At that time I did not intend to call it.

Q. You did not intend to do it?

A. No, sir.

Q. Now, what was the date you were at Amarillo?

A. I don't remember, General.

Q. It was during that school tour, wasn't it?

A. Yes, sir.

Q. It was the latter part of June?

A. I think so, somewhere between the 20th and 25th, I think.

Q. Yes. And you do not now waive the right that this Court has no jurisdiction because the Legislature was not called for the purpose of impeachment?

A. No, I am not waiving any rights.

Q. Not waiving any rights under it?

A. No, sir.

Q. Well, now, you made some statement, Governor, going back to the University for a moment, there was something that I had omitted. You made some statement that the University Regents objected to your

having anything to say in the University management?

A. Some of the University Regents did, yes, sir.

Q. Isn't it true that they invited you there to make any suggestions that you saw fit?

A. Mr. Cook did, yes, sir.

Q. Didn't the others do the same thing and didn't they recognize your right in all the conferences that you had there to make any suggestions that you wished?

A. Dr. Faber, in the letter which you read there, thereby denies my right to inquire into the affairs.

Q. The letter speaks for itself, Governor?

A. Yes, sir.

Q. I don't care to discuss that with you, but I am asking you if in those oral conferences which you had if they did not recognize your right to go out there and make any suggestion that you wished?

A. Yes, sir, they voted unanimously that I might lay this matter before them when I was out there.

Q. Now, isn't this what the chairman said to you: "Governor, you mistake the proposition—my construction of the whole situation would be this: that you, if you had information which was for the welfare of this institution, coming to you either privately or officially, should have come to the members of the board, if you had expected action. And you should not have done as you did do—to say that these men have got to be discharged, without giving any cause whatever. If you had come before this Board and rehearsed in detail as you have today, I doubt not but what you would have had a thorough investigation made along this line before this and I am sure Dr. Vinson believes the same way." Now, isn't that what the chairman told you?

A. That is what Will Hogg said, but at the same time he was just as mad as a bull and raising a row about my being there—

Q. Well, now, let's see about that.

A. —and his very demeanor at the time discredited every statement he was making.

Q. Discredited his statement?

A. Yes, sir, showed that he represented the idea that I would even undertake to suggest anything to him. You never saw such a turkey

gobbler strut in your life as that fellow got out there.

Q. As many as I have seen?

A. As many as you have seen.

Senator Bee: As many gobblers or struts? (Laughter.)

General Crane: Both.

Q. Didn't you open the discussion this way—you spoke to the chairman, and didn't Dr. McReynolds say this: "I move we extend the courtesy of the floor to the Governor to make any statement that he may want to make"?

A. Dr. McReynolds stated that, but that was not the way the meeting opened. We didn't have a stenographer there that recorded the meeting, the first part of the meeting.

Q. I am coming to that directly. Dr. McReynolds said that?

A. Yes, sir, he said that.

Q. Now, here is Mr. Hogg, whom you criticize, and didn't he say this: "Absolutely. If there is no motion to the contrary we give the Governor the floor to say whatever he pleases, and I think that, Gentlemen, regardless of the truth or falsity of any charges, sudden or of long standing, that the men who are to bear the brunt of any accusation, whether true or untrue, are just as much entitled to counsel and well directed interrogatories to the witnesses who appear against them as the Governor and his personal counsel." Who did you have there with you?

A. Senator Caldwell went there with me.

Q. He went there as your friend?

A. Yes, sir.

Q. "It seems to me that—I am just speaking from the standpoint of a member of the Board—that in hearing any charges, one way or the other, that reflect on any man, whose innocence or guilt we will pass on here, that man ought to be entitled to be present and to be represented in the cross questioning also, otherwise we hold an ex parte meeting." Well, now, that was fair, wasn't it?

A. Well, that might have been his opinion about it, but as I told them at the time, I did not go out there to have any trial—didn't go out there as any county attorney or district attorney to file complaints on information or belief, and if they didn't want to hear me under the nature of the good of the order to lay the matter before them I was go-

ing to come back to Austin—to come back to the Capitol.

Q. That is, if they called the other people in?

A. Yes, sir, I didn't go out there to have any trial and so advised them.

Q. Well, we will go on. Dr. Fly said: "I said simply to get the indictment before the grand jury." Now, didn't the chairman say: "If I know anything about it, the grand jury don't summon the defendant until the indictment has been made." Then Mr. Sanger said: "The Governor wants to be heard and we had better let Mr. Long be out of the room unless the Governor doesn't object," and you said, "No"?

A. I think so.

Q. You didn't object?

A. No, sir.

Q. Mr. Sanger then said—asked that Mr. Long be sent from the room during this preliminary statement. The chairman announced that. Now, this is what you said next, isn't it?—you said: "You spoke of my personal counsel and I suppose you referred to Senator Caldwell. He is an alumnus of the University, considered a friend of the University, a citizen of Austin, and has been elected a member of the State Senate, to whom this University is to look for its maintenance. He is my friend and he is certainly disinterested in coming here, and is not acting as a lawyer. If there is any objection to his coming here I would like to hear it. I know Senator Caldwell's intention is not to intrude himself on the meeting at all. That is why he is here. He isn't any paid counsel, although if I wanted to retain him as such I would reserve the right to do it. But that is why he is here." Then didn't the chairman add: "On that basis I presume there is no objection"?

A. I think he did.

Q. Now, Governor, Fly wanted to hear from you first—

Mr. Harris: Dr. Fly.

Q. Dr. Fly, I mean. Then you answered: "The only thing about it, I am a very busy man and when Mr. Long comes to make his statement I infer he would be subjected to a long cross examination at least. I have arranged to go out of town this evening and I have to go. If they want to make any interrogation of me I might get through in order that I might get away on the 3 o'clock

train." Mr. Harrell said: "That is my reason in asking that we go into conference with Governor Ferguson first." Now, all that took place?

A. As well as I recollect, that occurred.

Q. "The Chairman: Would you have any objection to my telling Mr. Long why we called him?" and you answered: "If you really want the facts, I don't see any reason why Mr. Long should not be present. The Chairman: I asked him to make his statement now in regard to that incident or any more circumstances which came to his notice." Now, you added—"Governor Ferguson: I only said that as I have so many things to do and this was set this morning—in accordance with the request of the Chairman for me to be here—understand, I have some other things to attend to besides this proposition." The Chairman had invited you there that morning?

A. Yes, sir.

Q. Now, the Auditor enters. Then Mr. Sanger proceeds: "I think, in order for us to proceed in this matter, we should hear from the Governor first, before we hear from Mr. Long, and then perhaps we would know how to proceed further on. We can't proceed without hearing from the Governor and if the Governor don't object to Mr. Long's being present—the Board, I am sure, expresses my wishes in the matter, do not object to anything that is being done here in public." Now you added: "If you want to bring Dr. Battle and Dr. Ellis and these other gentlemen in here to hear my statement it is all right." The Chairman then adds: "I think it is sufficient when we know what they are accused of to have them here. But the witnesses as to the facts—they ought to be confronted by them sometime, in the long run. I think you would concede that, wouldn't you?" Then you answered: "I think the proper procedure—it is not the place for them to be here. But I want it understood that I have no desire to do something behind Dr. Battle's back I would not do to his face. I want to say that by way of personal privilege." The Chairman: "That is what I was saying. After the charges are made they can come in here." Now, you filed there written charges covering several printed pages of this book, didn't you?

A. They were not written charges; they were information furnished me by the Auditor.

Q. They were signed by you?

A. No, sir, they were not signed.

Q. Look on two or three of the pages there and see if your signature is not at the end of it—perhaps you have a copy of it in your book?

A. I don't see my signature there.

Q. No, turn on two or three pages, or three or four—maybe you turned two at once. There it is, perhaps?

A. That was a letter, a quotation from a letter that I read. It shows that I am reading from a letter which I signed.

Q. Yes. You read to them, then, a letter?

A. Yes, sir.

Q. Now, you had a meeting there then. That was in October, wasn't it?

A. I think so.

Q. After that meeting the Regents considered the questions involved and decided them, didn't they?

A. They did. They had a meeting out there—continued the meeting. I wasn't at the meeting any further.

Q. Now, during that investigation, before the decision was made, you said this to them, didn't you, and before the charges were read—that is to say, before there were any witnesses offered: "That only shows what I was starting out to prove—that you gentlemen have got the idea up here—the very fact that the president of this University would treat so lightly the statement of the Governor of the State, who has gone out and made specific demands, as it were, that these professors be removed—that he treated that so lightly that he would not even take the opportunity to come and have a talk about the matter. He has simply indicated to the Governor of the State that he simply wants to proceed independently. In Dr. Vinson's letter to me he assumes and arrogates to himself absolute independence. No man is independent. The Governor of the State is amenable to the people and every man around this board is amenable to the executive head of this government." You meant by that that all those professors must be amenable to the Governor of the State?

A. No, sir, I did not, and my statement did not so state.

Q. Well, what did you mean by that?

A. I meant what I said there.

Q. Well, what did you mean by "executive head" if you didn't mean the Governor?

A. Oh, I meant the Governor.

Q. That is what I asked you.

A. But you said professors.

Q. "Every man around this board"—that meant the Board of Regents?

A. The Regents, yes, sir.

Q. That they were amenable to you?

A. Yes, sir, not to me personally, but—

Q. (Interrupting) As Governor, I understand.

A. As Governor.

Q. "And no attempt was ever made to go into this matter. Now, Gentlemen, this shows how this is going—you have got your vote and I will have my vote. We just as well understand each other and I will tell you now, if you undertake to put these men over me"—you meant the members of the faculty, by that?

A. Yes, sir, the members referred to.

Q. That you objected to?

A. Yes, sir.

Q. "I am going to exercise my constitutional authority to remove every member of this Board that undertakes to vote to keep them. I say that in all due candor."

A. Yes, sir.

Q. Now, didn't the Chairman, Will Hogg—I guess he wasn't strutting while he was sitting down—didn't he ask you this question: "Do you want this Board to dismiss these men without investigating the charges?" and didn't you answer: "You can do as you please about it. It seems that I have to prove my case step by step and it seems that the Governor of Texas is an orphan child, and it seems that at the University he has to prove his case. I haven't got time to come out here and appear in the role of county attorney. So far as I know I could offer you witnesses from the University of Texas crowd in my last campaign and a very few members of this Board of Regents." Did you make that statement?

A. Substantially that, I think.

Q. "I got information that a professor of this school went down and presided at a county convention with

a crowd that refused to endorse this administration." Now, that was Mr. Cofer, wasn't it?

A. That was my information.

Q. Your information?

A. Yes, sir.

Q. You had never asked him about it and never investigated in the convention about it, the members with whom he counseled?—"Now, you all have made the issues—you never criticised Cofer for going down and participating in politics in a county convention. You kept him, and you kept Will Mayes, editor of a paper that skinned me from hell to blank. You have expected me to be satisfied and you believed me checkmated, but the biggest fight is on you ever had if you undertake to put this thing over—I say that in all candor." Now, that was your statement?

A. Yes, sir.

Q. With the exception of the blank which was supplied by "breakfast?"

A. Well, I always thought they misrepresented me about that. I meant to say Hall River. (Laughter).

Q. "I would not have made that statement this morning but for the question of Dr. Vinson and Mr. Hogg, who seemed to put me in the attitude of not having raised this question, and I wanted to keep it quiet. I was in hopes that some determination would be made about this matter and something would be done, but it seems to me that the thing must be gone on with. I have been forced to take this stand—regretfully, of course. When we get to a position where we have to take a stand we just as well understand each other. You gentlemen can do as you please. That is all right, but you have forced the issue and, I judge I have got to meet directly the reflection on me candidly. You keep that man Battle here and you lay a precedent that tells every Governor for forty years they have got no right to do as they want to—that is the issue that is raised." You stated that, I believe, Governor?

A. Substantially that.

Q. Now, then, Dr. Fly added: "Did you read No. 8 of the rules governing the Board of Regents?" You answered: "No, I did not." Then,

you add: "If there is any gentleman who wants to ask me any questions I will answer any questions you want to ask me." That was your language, wasn't it?

A. Yes, sir.

Q. Now, the Chairman then: "What suggestions of procedure have you got to make in regard to this matter?"—that was Mr. Hogg's question to you. Isn't that correct?

A. I think so.

Q. Your answer is: "How is that?" The Chairman complimented you: "You are a trained lawyer, or at least know about such matters. What suggestions have you got to make for procedure in this matter?" Then you asked: "Do you really want my opinion?" The Chairman: "I don't fool anybody; I am asking you on the square. Governor Ferguson"—those questions were asked and answered in that way, I presume?

A. I think it is incorrect in that language. I said, "Do you really want me to give you my opinion about it or are you asking for the purpose of an argument?" And he replied, "Yes, I would like in all candor for you to give me your opinion how you can dispose of the matter."

Q. Well, all right. You said: "I think it is just as easy as falling off a log. If you simply go to these men—and they are guilty of the charge, there ain't two ways about it—if Dr. Vinson will just simply go to these men: 'You made this record here and I am not to blame for it—I can't include your name in that list and I want to relieve this University of this issue.' And that is all there is to it. Everything will be harmonious and everything will come along all right. But whenever you get the idea into your head that you will make one of these teachers out there bigger than the Governor or the Legislature—it is just like a cash boy in Mr. Sanger's store trying to tell Mr. Sanger where to head in. You all can't expect me to keep my self-respect and put Battle over me." Now, Governor, was that your real conception of the situation—that you as Governor had the same control of the selection of the president and professors in the University that Mr. Sanger or Mr. Scarbrough would have in the selection of a cash boy?

A. That who would have control over them?

Q. The Governor of the State?

A. No, sir, not the Governor of the State—the Board of Regents.

Q. But your language was that "whenever you get the idea in your head that you will make one of these teachers out here bigger than the Governor or the Legislature, it is just like a cash boy in Mr. Sanger's store trying to tell Mr. Sanger where to head in."

A. Well, that language did not refer in any way to the matter of an election. My opinion then was, and now is, if you let the president of the University come down and misrepresent things to the Governor and the Legislature to get money appropriated on the representation that he is going to do a certain thing—

Q. (Interrupting): Well, I don't want that—we have discussed that at length.

A. All right.

Q. What do you mean by telling them as to your control over the faculty and professors of the University?

A. I was talking about that man Battle, and I was trying to tell you about it.

Q. Now, Mr. Harrell said: "These charges or accusations, before you go to a man—don't you think a man ought to have a hearing to refute these charges?" You answered, "Not necessarily so," didn't you?

A. Yes, sir.

Q. Mr. Harrell said this, then, didn't he: "I don't think any man should be tried for his life, or tried for his position on the charges of Mr. Long or you or me or any other member of this Board, without he stands before the Board and gives his side of it." Then your answer was: "Now, Dave, you know you and I are friendly?" Mr. Harrell: "Sure." Then you said this, didn't you: "You are proceeding on the theory that these professors have got some legal right here. They are tenants at will just like any man that is working for Mr. Sanger or in Major Littlefield's bank. For the good of his bank he can discharge and the discharging is done and does not call for anything further when they catch him with the goods on. On the other hand, if you want to go into it, that is your privilege." You stated that, didn't you?

A. Yes, and I will state that yet.

Q. Well, now, reading on, the discussion continues. Didn't Mr. Sanger say this: "Would it be right to discharge people without giving them a little time to explain this? Is it right, even if they are guilty, to ruin their entire careers, to discharge them so that when they look for another position, if that fact is known, that they have been discharged"—and you interrupted then: "If they want to resign give them a chance to resign?"

A. I think that is substantially correct.

Q. And then didn't Mr. Sanger answer you: "You must give them a little time to find another place. There is no excuse for being dishonest; there is no excuse for retaining them in this University if they are dishonest. I think it is very much to the credit of the Governor that he has investigated these questions." That was stated, wasn't it?

A. Mr. Sanger said that.

Q. Yes—"and it is to our discredit that we have not. I want to ask a question, whether Mr. Long would have reported these things without their being asked for or have reported them to the Governor without being asked for them?" You answered then that you wrote that as a matter of a letter—in answer to a letter. Then Mr. Sanger made another suggestion: "Another thing that you do not want to overlook. You can't go out on the street and find somebody to take the places of men—in this particular branch of business less easy than in any other, and so we should go slow. I heard the Governor say that he was going to leave that report with us, that report of Mr. Long's." Now, didn't you finally conclude your part of the discussion largely as follows on the question of injuring those men? "That is the reason I took the liberty of telling Dr. Vinson what I did. Then their argument would not arise and nothing would be done. As to the argument that it would injure the man's reputation, that is very good, but no man's personal welfare or his dishonor or his ambition should supersede the best interests of this University. It might be bad for him to explain to somebody else when he was let out here, but when you go to explain to the next Legislature and you go into all these

things you will then find that for the sake of a few men who have not had a proper conception of their duty, you have done your University an irreparable injury, and this thing will come out." That was your position, then, wasn't it?

A. Yes, sir.

Q. And that is your position now?

A. Yes, sir.

Q. That no officer has a right to put his personal ambitions or the effect that a certain course may result in personal injury to him or his—

A. No, sir.

Q. —as against public duty?

A. I think not.

Q. Now, you stated that Will Hogg said that he would suffer a certain punishment before he would let you interfere in these matters. Isn't this what he said: "Unless all those allegations are true, I don't care whether it comes out or not myself, but it wouldn't do the University any good to have it published if it is true. If it is untrue, if these charges cannot be substantiated, and we go ahead here on a hunch and perhaps eliminate five or six or seven men, because we certainly have the authority to do it, I for one would rather go to hell in a hand basket myself than so act, without any investigation into the charges, because these charges are easily proved or disproved." Now, that is what he said, isn't it?

A. Yes, sir.

Q. He didn't object to an investigation or to your communicating with the Board of Directors—or the Board of Regents?

A. No.

Q. He brought that up about casting this reflection upon those men without any investigation?

A. Yes, sir, and I never objected to any investigation. I was only answering his question about how he could proceed.

Q. Now, Governor, on this chicken salad case, you are entirely familiar—you are familiar now, Governor, with this section of the Constitution which fixes the salary of the Governor, aren't you?

A. Yes, sir.

General Crane: Indulge me just a moment, Mr. Chairman, please.

Q. The provision of the Constitution reads as follows: "He shall at stated times receive as compensation

for his services an annual salary of four thousand dollars and no more and shall have the use and occupation of the Governor's Mansion, fixtures and furniture." Now, Governor, what do you understand by "salary of four thousand dollars and no more?"

A. No more salary.

Q. No more salary?

A. Yes, sir.

Q. And that you shall have the use and occupation of the Governor's Mansion, fixtures and furniture?

A. Yes, sir.

Q. Now, don't you recognize the rule that when the Constitution prescribes what shall be done and in what way it shall be done, that that only shall be done and only in that way?

A. I understand that is the rule.

Q. Well, now, groceries and family expenses constitute no part of the fixtures or the furniture, do they?

A. No, sir.

Q. Governor Colquitt was the only Governor who ever had an appropriation made to buy his groceries, wasn't he, within your knowledge?

A. I think that is correct.

Q. Groceries and incidentals. Well, now, in the early part of your administration the question arose as to the right of the Governor to thus take money out of the Treasury to pay his expenses, didn't it?

A. Yes, sir.

Q. Mr. Middleton brought a suit to restrain the Comptroller from paying the warrants, or issuing them, covering these items of Governor Colquitt's, didn't he?

A. Yes, sir, based on deficiency warrants.

Q. Based on deficiency warrants. You knew that the Attorney General refused to represent the Comptroller, didn't you?

A. Yes, sir.

Q. Telling him that he was wrong—that his contention was wrong?

A. Yes, sir.

Q. And contrary to the State's best interests?

A. I never understood he told him that. I understood he told him he would not represent him.

Q. Well, you knew that the contention about the additional compensation of Governor Colquitt was a controversy that would inure to

Governor Colquitt's own good or those who succeeded him, didn't you?

A. Yes, sir.

Q. It could not be said to be to the interest of the people of Texas?

A. Well, I think it was.

Q. You think it was?

A. Yes, sir.

Q. Well, at any rate, that suit went into the District Court and the District Judge decided against you—that is, decided against Mr. Terrell?

A. Yes, sir.

Q. It was then appealed to the Court of Appeals and transferred to San Antonio?

A. That is true.

Q. And that court affirmed the decision of the lower court?

A. That is true.

Q. Now, you did not take either the judgment of the Attorney General or the judgment of the District Judge or the judgment of the Court of Appeals, did you?

A. No, sir, I didn't.

Q. You continued to exhaust the appropriation that was made for light, water, fuel and incidentals?

A. Yes, sir.

Q. And with those proceeds to purchase the family supplies and groceries, butter and eggs, automobile repairs, and so forth?

A. Yes, sir, without objection of the Comptroller or the Attorney General.

Q. Well, perhaps you would limit that statement: You knew that the Attorney General was of the opinion that you were not entitled to it by his refusal to take the Comptroller's side of that case?

A. Yes, but they never objected to me spending it.

Q. You also knew that the District Judge objected to Governor Colquitt's payment although the appropriation expressly mentioned groceries—you knew that, didn't you?

A. Judge Calhoun's opinion was not so clear as the San Antonio Court's. He simply went to the extent of enjoining the payment of certain items and permitting the payment of others, without attempting to describe and fix the purpose for which that might be expended.

Q. Well, the language of the San Antonio Court is beyond question, isn't it?

A. I think so.

Q. And didn't you understand that as those deficiency warrants had been issued for the objected items or the items complained of, that the effect of Judge Calhoun's decision was to hold that those items could not be paid?

A. The San Antonio Court approved his findings.

Q. Yes, and elaborated on them?

A. Yes, sir.

Q. Now, the Supreme Court—you kept on after that—the Supreme Court refused a writ of error, didn't it?

A. Yes, sir, the Supreme Court refused a writ of error.

Q. And didn't you continue to issue deficiency warrants for those supplies up to and after the date of the refusal by the Supreme Court of the writ of error?

A. I don't think so. My recollection is that those warrants had been issued before the Supreme Court passed on the matter. I might be in error about that, but that is my recollection about it.

Q. Yes. Didn't you send two messages to the Legislature including those deficiency items after they had been affirmed—after the writ of error had been refused and while that motion for a rehearing was perhaps pending?

A. I think that is true. I don't remember the dates.

Q. Yes. Now, in addition to that, while your motion for rehearing was pending, the bill—a bill raising the salaries of the judges was passed by both houses of the Legislature and submitted to you for your approval or rejection, wasn't it?

A. I don't know whether the motion for rehearing in that case was pending or not. That didn't enter my mind.

Q. You know that you did veto that bill, however, after the motion for rehearing was overruled by the Supreme Court?

A. I think so.

Q. Yes. Now, you had in that case employed two lawyers, hadn't you?

A. Mr. Terrell employed one and I employed another.

Q. You employed Pat Neff of Waco?

A. No, Mr. Terrell employed Mr. Neff.

Q. Mr. Terrell employed him?

A. And I employed Mr. Ike White.

Q. Mr. Ike White. Both of them were paid fees?

A. I don't think White has ever got his fee yet.

Q. No?

A. No, sir.

Q. Did you employ him for the State or personally?

A. I employed him for the State.

Q. He lives in Austin?

A. Yes, sir.

Q. Mr. Neff lives in Waco?

A. Yes, sir.

Q. They had done presumably what was necessary to be done by lawyers in this case?

A. Well, I suppose they had done all they could. They said they did, at least.

Q. Yes. Now, while that motion for rehearing was pending, you wrote the Supreme Court a letter that was read in evidence here?

A. Yes, sir.

Q. You called their attention to the provision of the Constitution which had been presented in your lawyers' briefs?

A. Well, it now appears that it was presented in the lawyers' briefs. I don't know anything about the lawyers' briefs and had never read them.

Q. You didn't consult with them about it?

A. Oh, I talked to them about it and one of them had mentioned this point about the incidental expenses provided for in the Constitution.

Q. Yes. You didn't phone them about it?

A. No, sir, I didn't phone them about it.

Q. Governor, I omitted—yes, you had another case pending in the Beaumont Court—the Dayton Lumber Company?

A. A case in which I was interested, yes, sir.

Q. A case in which you were interested as a defendant?

A. Yes, sir.

Q. A suit had been brought for about 1700 acres of land, I believe?

A. Yes, sir.

Q. Approximately?

A. Yes, sir, that is true.

Q. And judgment had been rendered in favor of the defendants in the Court below, and an appeal had been taken by them—no, by the plaintiffs, and the case was reversed by the Beaumont Court, and partially rendered, the result of the reversal

was—at any rate, the result of the reversal was to give them something over 500 acres—five hundred and eleven and something of the land was given the plaintiffs?

A. Yes, sir.

Q. Pending that motion for rehearing, you wrote—there was a motion for rehearing made, and pending that, you wrote the letter to Judge Brooks, which has been read in evidence?

A. Yes, sir; I didn't know anything—didn't recall about the motion being pending. I thought they had already decided the matter.

Q. You sent copies to the other two judges?

A. Yes, sir.

Q. Neither of them had written you any letter, had they?

A. No, sir.

Q. You were simply advising them of what you were saying to Judge Brooks?

A. Yes, sir.

Q. And incidentally what you thought of the entire Court?

A. What I thought of the decision in that case.

Q. The decision in that case?

A. Yes, sir.

Q. And their efficiency as Judges?

A. Yes, sir.

Q. Now, it seems that in about a week thereafter your lawyers filed another motion for rehearing?

A. I didn't know anything about that, and it was not in my mind when I wrote the letter; when I wrote the letter I thought they had already decided the case and settled it.

Q. Well, the motion for rehearing was held up, however, until the following November, wasn't it?

A. I learned afterwards it was, yes, sir.

Q. Did you have no hopes in the meantime that the letter and the motion for rehearing would change the result?

A. No, I thought I had already lost.

Q. You thought you had already lost?

A. Yes, I was exercising the right to cuss the Court. (Laughter.)

The Chair: Let's have order in the chamber.

Q. Are you in the habit of cussing the Court by letters written them about what they have done, or go down to the corner grocery, after the old rule, after it is over?

A. Well, I think the safest way is to go down to the corner grocery.

Q. Yes, perhaps there would be less impropriety in it. Now, you made some statement here yesterday, you raised a constitutional question of the power of the Legislature to appropriate money for the State University. What was the section you cited first—Section 48 of what Article?

Mr. Hanger: Ten and eleven, Article seven.

A. Sections ten and eleven of Article seven, I think it is.

Q. Ten and eleven of Article seven? Now, did you ever call attention, or was your attention ever directed to Section 48 of Article 3 of the Constitution, as found in the Legislative Manual on page 14?

A. Yes, sir.

Q. It reads as follows (reading):

"The Legislature shall not have the right to levy taxes or impose burdens upon the people except to raise revenues sufficient for the economic administration of the government, in which may be included the following purposes: The payment of all interest upon the bonded debt of this State, the erection and repairs of public buildings, for the benefit of the sinking fund, which shall not be more than two per centum of the public debt; and for the payment of the present floating debt of the State, including matured bonds, for the payment of which the sinking fund is inadequate; the support of public schools, shall be included colleges and universities established by the State; and the maintenance and support of the Agricultural and Mechanical College of Texas."

Q. Now, do you not think that taxes may be levied for the purpose of maintaining those institutions?

A. Just ten minutes ago you said that when the Constitution provided a certain thing should be done in a certain way, that that excluded every other way. Now, then, if that applies under that ground, that might apply to some other university; but when you establish the University of Texas mentioned in the other article, then under the rule which you just awhile ago flaunted in my face about the Constitution providing a certain way that a thing shall be done, it is exclusive of all others, and, granting for the sake of argument, that the constitutional provis-

ion which you read there would give them the right to build some other university, when the Legislature, under the provisions of ten and eleven of Article seven, go and establish a State University and say that all the appropriations made for this University shall be invested in bonds of the United States and the other States—all State bonds, and they can only appropriate the interest thereon to the support of the University, then, so far as this University is concerned, you are controlled by that statute, and that is my contention.

Q. Losing sight of another principle?

A. No, sir.

Q. That all of the provisions of the Constitution on the subject must be construed together?

A. Yes, sir. And when you read that provision which you have read, in connection with the other provision, you must read them together.

Q. All right, now—

A. And when it says that although it gives you a right to appropriate money to support a university, when the Constitution goes on and specifically says that you have got to use that money for the University of Texas in a certain way, then the doctrine of *expressio unis* certainly applies, and it could not be diverted to the current expenses of the University.

Q. Couldn't you construe those two provisions together to enable them both to stand in this way, that the articles to which you referred yesterday, and the sections related solely to securing a permanent endowment for the University, but until that permanent endowment shall be secured and the young men and women of the State given a chance for an education, that the University and the A. & M. College and the public schools must be supported by taxation, or at least may be?

A. That could not possibly be the construction, for the Constitution expressly provides that this University, which is the University of Texas, that appropriations made for it must be expended and in a prescribed manner.

Q. All right, then Governor?

A. Fixed by that.

Q. With your conviction on that subject in that way, you would be obliged hereafter, as has recently been called to your attention, to

veto any appropriation made for the University of Texas or the A. and M. College, out of the general revenues of the State, wouldn't you?

A. No, not the A. and M. College, that is on a different ground.

Q. That is a part of the University?

A. I understand; but the provision referring to the special investment only refers to the University there, and there is another provision that says—that provides for the support of the Agricultural and Mechanical College.

Q. Well, all right, then, your attitude towards the University would be that you would be obliged under your oath of office to veto any appropriation made out of the general revenues of the State for it,—isn't that so?

Mr. Hanger: That is immaterial.

Q. Isn't that so?

Mr. Hanger: I think that is immaterial, what he might do hereafter.

General Crane: We are charging him, Mr. President, in these articles, with the destruction of the University by unconstitutional methods, and if it is his conviction now that no appropriations can be lawfully made out of the general revenue of this State to support the University, then the charge is completed and proven, because such would be his sworn duty, and it would be impossible to maintain a University under any appropriation to be made by him.

Judge Martin: Now, Mr. President, it seems to me that this is a novel proposition, to ask what he would do hereafter, in substantiation of some charge which is pending now. It would have absolutely no bearing on earth on the matter under investigation at this time, to ask him what his attitude might be on some matter of legislation in the future. It might be that his construction of the Constitution regarding the appropriation might be that it should go into some specific fund and be invested in some particular way, as provided by the Constitution, without any effort or thought of destroying the institution itself, but to ask him what he will do about it in the future would certainly not be a proper question and not throw any light upon the transaction here, but would be trying a man for some act that he might choose to do in the

future, and we certainly object to it; and it would not be binding upon the Respondent as to anything that he might do in the future; and furthermore, he could not tell himself what he might do in the future, it would be nothing more than an opinion of the Respondent himself as to future acts, and the mere fact—

The Chair: The Chair propounds this question: Would it cast light upon his convictions and intentions, would that cast light upon his attitude towards the University as raised in the charges—the fifteenth and sixteenth articles of impeachment, his convictions and intentions toward it, would those be admissible as casting light on his attitude towards it under—especially under Article 15?

Judge Martin: What is that article?

Mr. Hanger: I will turn to it in just a moment (handing the article to Judge Martin).

Judge Martin: No, sir, we do not see that it would throw any light upon that charge in Article 15 at all. As I understand, this Respondent is answering to certain charges, of something that was committed by him in the past, some act committed by him. Now, as to his attitude towards the University, on this particular phase of the inquiry, the Chair will remember that the Respondent on yesterday stated that this provision of the Constitution did not guide him in any manner in his action in regard to that veto at the time. That his attention had not been called to this provision of the Constitution, and that he was not acting under it at all, and that it was not until the proceeding over in the House when he was charged with having sought to strike down the Constitution, that this investigation was made, and upon the investigation being made, that he found certain provisions in the Constitution, and which were in direct antagonism to the charge made against him, that he was trying to strike down the Constitution—and stated explicitly on the stand that his actions in regard to this entire transaction were not based upon constitutional inhibitions in any manner whatsoever, and it was only in reply to that charge of trying to strike down the Constitution that he cites the provisions in the Constitution relating to the character of the investment of that fund. But after this

inquiry is made and the Respondent testifies that he finds certain provisions in the Constitution specifically pointing out the manner in which these appropriations shall be invested, why, then, they seek to ask him as to some course that he would pursue in the future. Why, under no rule of criminal jurisprudence do I understand that a man on trial for any offense whatsoever can be asked, nor could it be relevant to ask or propound the inquiry, as to some act that he might do in the future. As to his future view or construction of that Constitution at this time, would have absolutely no bearing upon the inquiry and these charges that he is called upon to answer here, and it would be an unjust method, as we take it, to inquire into the problems that he is confronted with now, as to what he might or might not do in the future; and for that reason we earnestly object to propounding the question, and here take the position that it would not be binding and it would be detrimental to Respondent's rights in this transaction.

The Chair: Anything further, General Crane?

General Crane: Yes, sir. Article 15, Mr. President, reads as follows (reading):

"The people of this State have adopted an organic law, the Constitution of Texas, equally binding upon its highest officials and its humblest citizens. Article 7 of that Constitution provides for the maintenance and support of the University of Texas. That provision is a direction given by the people themselves in their most solemn manner to those who represent them in office, as to their duties.

"The Governor has vetoed, or attempted to veto the entire appropriation for the University of Texas, except the salary of one officer, thus, in effect, seeking to set aside that provision of the organic law requiring the support and maintenance of that institution and to set aside the express will and judgment of the people of Texas. Though he had the legal power of veto, it was his sworn constitutional duty to again submit the question to the Legislature, which he has declared to the people of Texas he would not do, and it was only when a session had been called for his impeachment, and it was apparent that a quorum of the House

would attend to consider that question, and as a last extremity, he consented to call a session of the Legislature and submitted the question of appropriations for the University of Texas."

General Crane: Now, Mr. President, there are two thoughts in this article, the first is that that provision of the Constitution, Section 7, is mandatory, that the University must be created and established. The other provision of the Constitution, I think, is clearly plain, and has been to every man who has been called upon to construe it, that those two provisions of the Constitution, the one establishing it and maintaining it and seeking and giving expression to the hopes and aspirations of the people of this great State, that permanent funds would be created upon which interest could be earned and income enough derived to maintain the University without appealing to the people for taxation other than to take care of the securities in which those investments were made, and until that time it became necessary, as it evidently is necessary, to make appropriations for the benefit, from the general revenue, to maintain the institution. Now, we have the Governor admitting that in his opinion, and he is very positive and emphatic about it, that the appropriations out of the general fund which he vetoed, for a different reason, cannot and ought not to be made; therefore, he is committed to the doctrine that the University cannot be maintained by appropriations out of the University—out of the general revenue; therefore, he is committed to the doctrine that no appropriation can properly be made by the Comptroller of the State, or by the Treasurer, even though the Legislature says that it may be done; and, therefore, Mr. President, he is committed to the doctrine that the University must close its doors, because it cannot be maintained at present with the securities in hand, except by resort to this method of raising money by general taxation, and this becomes a part of a general revenue. I take it, therefore, that it is perfectly proper—we are not trying a criminal case here, that question has been disposed of—criminal Courts—the Senate is not a criminal court, but we are trying the fitness and qualification of the present executive for the high

and important and responsible duties which he is called upon to discharge, and if he exhibits in this case a conviction, which must necessitate, if he remains in power, the destruction of one of the institutions of the State, which has cost as much blood and treasure and purpose as has been expended on this institution, then this body ought to consider that, as to whether the enormous power of the Governor should still be retained in his hands. Mr. President, there is no escape from it, in my judgment, it is a legitimate question, one that this Court has a right to have him answer, and the answer should be considered by them when they determine his fitness and qualifications for this position.

The Chair: Now, General Crane, right there, the witness has already testified as to his conviction as to the legality of any appropriation for the maintenance of the University. Where would the relevancy be as to what he would do in the future, the appropriation bill having been already passed? Now, it has been passed by the Legislature and signed by the Acting Governor.

General Crane: Yes, sir, but it may become necessary, Mr. Chairman, to make some additional appropriations for the University, something may befall it, something may happen that even deficiency certificates or deficiency warrants will have to be issued for that, just as they are issued for other institutions, and suppose it should become necessary so to do—I suppose that deficiency certificates in order to educate the young men and women of this State, and in order to obey the commands of that Constitution should be necessary, what have you? You have an executive in the chair who swears that he does not believe that the Constitution permits a deficiency certificate to be paid out of the general fund, and therefore, you have a man in the chair, at the helm, who cannot and will not render any aid or assistance to that institution, no matter how the signal of distress may be waved or who may make the request—could not consistently do it, a man cannot forswear himself, and ought not to be asked to do it.

The Chair: The testimony has already gone in as to his conviction.

General Crane: Yes, sir, I know it.

The Chair: Now, as to his action in the future, that is a different question.

Judge Martin: Now, Mr. President, after raising the question, briefly, I expect to call the attention of the Chair to the very suggestion that the Chair has made, and that is, so far as this Respondent is concerned, the Court will take judicial knowledge that the appropriation for that University has already been made and approved, and for the present is taken out of the hands of this executive, no matter what the result of this trial will be; but to revert back to the statement made by counsel, I do not think it has any particular bearing upon this question, but when he refers to the fact that this Respondent by his statement, is committed to the idea that a deficiency could not be issued or any relief granted to the University, the circumstances and the evidence in this case will not warrant that statement, because, sir, I desire to call the attention of this Court to the fact that the evidence in this case now is before this Court, that this Respondent approved the largest appropriation for that University ever known in its entire history, and every syllable, every word and every utterance of this Respondent has been to the effect that he has been a friend of higher education, a friend of the University, and he has been willing, in a legal way, to support it in every crisis with which it has been confronted, and his statement here is, and construction of that Constitution, is not that he is opposed to the appropriation for its maintenance, but that he wants it maintained in accordance with the terms of the Constitution and with the laws of this State, and that is that these appropriations, instead of going into the general fund,—appropriations cannot, I care not how much they may be, is that they should go into a permanent fund invested in State and United States bonds, and the revenue derived from those investments to be expended in support of the University. It says, sir, that it would be without his power to issue deficiencies. I want to answer that by saying that the very record he has made here, and the evidence in this case show that he has done more for the University than any executive that ever preceded him, and under that construction of the Constitution, he would

have the power, in case he was retained down there, in the executive office, to call the Legislature together, in special session, and ask them to make an appropriation sufficiently large with the permanent fund to support it in any manner that he might deem proper, right and just. But that is aside from this question. The question here is that although it has been answered fully as to what his position has been on all these subjects, that they seek now to go further and ask him what he will do—what will be your position in the future, something that this Court can have nothing on earth to do with, and we earnestly, in closing this objection, insist that it would be improper for him to answer under those circumstances.

The Chair: I think it having developed that what the convictions or opinion of the Governor are on this particular question, the Court can form its own conclusion as to what his course in the future might be, that it would not be permissible to ask him what he may do hereafter. We are trying him on what he has already done, for what he has already done, and the objection will be sustained.

Senator Bee: Mr. President.

The Chair: The Senator from Bexar.

Senator Bee: Right at this time I would like to ask the Governor a question with reference to this constitutional provision. It is nearly adjourning time. I will ask him now, and then I will ask the Court to recess.

The Chair: This is a question of Senator Bee (reading): Do you not believe that Sections ten and eleven of Article seven of the Constitution referred to, were intended to protect the permanent University fund and not to limit the legislative right to appropriate money for the maintenance of the University, as set out in Section 48, Article 3 of the Constitution?

A. I think both provisions of the Constitution should be read together, and in view of the fact that the Constitution in reference to specific instruction as to the Constitution, provides what shall be done with the fund appropriated for that University, that that restriction would control. That is the way—that is a matter of construction. Now, I don't know whether I am

right about it, but that is my opinion.

Senator Bee: Mr. Chairman, it is 5 o'clock. As Official Mover for the rising of the Court, I move that the Court rise to meet at 10 o'clock tomorrow morning.

The Chair: The Senator from Bexar moves that the Court rise now to meet tomorrow morning at 10 o'clock. Those in favor of the motion says "Aye," those opposed, "No." The motion prevails and the Court will now rise to meet again tomorrow morning at 10 o'clock.

In the Senate.

President Pro Tem. Dean in the chair at 5 o'clock p. m.

Messages from the Governor.

Here Mr. S. Raymond Brooks appeared at the bar of the Senate with several messages from the Governor.

The Chair directed the Secretary to read the messages, which were as follows:

Governor's Office,
Austin, Texas, Sept. 18, 1917.

To the Thirty-fifth Legislature in Third Called Session:

I beg to submit for the consideration of your honorable body the following subjects:

1. Enactment of a law for the creation of a more efficient road law for Madison County, Texas.

2. Enactment of a law to create special fish regulations for Titus County; and exempting said county from certain provisions of the general fish and game laws of the State of Texas.

Respectfully submitted,
W. P. HOBBY,
Acting Governor of Texas.

Governor's Office,
Austin, Texas, Sept. 19, 1917.

To the Thirty-fifth Legislature in Third Called Session:

I beg to submit for the consideration of your honorable body the following subjects:

1. Enactment of a law to authorize the commissioners' courts of Rusk, Jim Wells, Jim Hogg, Starr, Zapata and Duval Counties, State of Texas, by a majority vote to issue scrip payable from one to twenty

years from date, bearing interest at the rate of not to exceed six per cent, for the purpose of taking up the present indebtedness of the county incurred for the purpose of building roads and bridges in said county; and providing that the yearly net revenue, less the necessary sinking fund to cover said scrip issue, may be used by the commissioners' courts of the said counties in repairing and building roads and bridges.

2. Enactment of a law creating the Pinkerton Independent School District in Haskell County.

3. Enactment of a law creating the Whitman Independent School District in Haskell County.

Respectfully submitted,

W. P. HOBBY,
Acting Governor of Texas.

Governor's Office,

Austin, Texas, Sept. 19, 1917.

To the Thirty-fifth Legislature in Third Called Session:

I beg to submit for the consideration of your honorable body the following subject:

Enactment of a law to prohibit the bringing of suits in this State to collect delinquent taxes until on and after the 31st day of January, A. D. 1919, and to continue all such suits now pending until such time.

Respectfully submitted,

W. P. HOBBY,
Acting Governor of Texas.

Governor's Office,

Austin, Texas, Sept. 19, 1917.

To the Thirty-fifth Legislature in Third Called Session:

I beg to submit for the consideration of your honorable body the following subject:

Enactment of a law to amend Article 6798 and Article 6799, Chapter 2, Title 118 of the Revised Statutes of the State of Texas for 1911, providing for acknowledgment of deeds and other instruments by persons in military service in the United States government to be taken before any officer of the Judge Advocate General's Department.

Respectfully submitted,

W. P. HOBBY,
Acting Governor of Texas.

Governor's Office,
Austin, Texas, Sept. 19, 1917.

To the Thirty-fifth Legislature in
Third Called Session:

I beg to submit for the consideration of your honorable body the following subjects:

1. Enactment of an amendment to Section 45 of Chapter 203, of the Acts of the Regular Session of the Thirty-fifth Legislature, being an Act "to regulate the use and operation of motor vehicles upon the public highways," prescribing penalties for violations of the provisions of said Act.

2. Enactment of a law amending Sections 3, 12 and 16 of Chapter 190 of the Acts of the Regular Session of the Thirty-fifth Legislature, defining the duties, powers and compensations of the State Highway Commission, to make allotment of State funds for the construction of parts of a system of State highways in unorganized counties for other territory in which the assessed valuations are insufficient to provide necessary funds for road construction, and defining, regulating and prescribing the annual registration fees for commercial motor vehicles.

Respectfully submitted,

W. P. HOBBY,

Acting Governor of Texas.

Bills and Resolutions.

(By unanimous consent.)

By Senator Bailey:

S. B. No. 27, A bill to be entitled "An Act to prohibit the bringing of suits in this State to collect delinquent taxes until on and after the 31st day of January, A. D. 1919, and to continue all such suits now pending until such time, and declaring an emergency."

Read first time and referred to Committee on Civil Jurisprudence.

Simple Resolution No. 18—Vote Rescinded.

Senator Henderson made the following motion in writing:

I move to rescind the vote by which the Senate adopted the motion of the Senator from Hunt to table the motion to reconsider the vote by which

Simple Resolution No. 18 was adopted

HENDERSON.

Senator McNealus made the point of order that such motion can not be entertained because when a motion to reconsider has been tabled such action is absolutely final.

The Chair overruled the point of order.

Senator Henderson moved to lay the motion on the table subject to call.

As a substitute Senator Westbrook moved to table the motion to rescind.

Senator Henderson made the point of order that a motion to lay on the table subject to call can not be substituted by a motion to table.

The Chair overruled the point of order.

Action recurred upon the substitute motion to table the written motion to rescind, and the motion was lost by the following vote:

Yeas—12.

| | |
|---------------------|------------------|
| Alderdice. | Hopkins. |
| Buchanan of Scurry. | Johnson of Hall. |
| Caldwell. | McNealus. |
| Clark. | Smith. |
| Collins. | Sulter. |
| Decherd. | Westbrook. |

Nays—13.

| | |
|-------------------|---------------------|
| Bailey. | Harley. |
| Bee. | Henderson. |
| Buchanan of Bell. | Johnston of Harris. |
| Dean. | Page. |
| Floyd. | Strickland. |
| Gibson. | Woodward. |
| Hall. | |

Present—Not Voting.

Lattimore.

Absent.

| | |
|-----------|----------|
| Dayton. | Parr. |
| Hudspeth. | Robbins. |
| McCollum. | |

Action recurred upon the motion to lay on the table subject to call the motion to rescind.

Pending discussion by Senator McNealus, Senator Page made the point of order that the Senator is discussing the merits of Simple Resolution No. 18 which is not before the Senate at this time and should confine his remarks to the pending motion to lay on the table subject to call.

The point of order was overruled.

The motion to lay on the table subject to call is pending.

Adjournment.

At 5:35 o'clock p. m. Senator Clark moved that the Senate adjourn until 9:30 o'clock tomorrow morning.

The motion prevailed.

APPENDIX.

Enrolling Committee Report.

Committee Room,
Austin, Texas, Sept. 19, 1917.

Hon. W. L. Dean, President Pro Tem. of the Senate.

Sir: Your Committee on Enrolled Bills beg leave to report that we have carefully compared Senate Bill No. 14, copy of which accompanies this report, and find the same correctly enrolled and have this day at 11 o'clock a. m. presented same to the Governor for his approval.

SMITH, Chairman.

FIFTEENTH DAY.

Senate Chamber,
Austin, Texas,
Thursday, Sept. 20, 1917.

The Senate met at 9:30 o'clock a. m. pursuant to adjournment, and was called to order by President Pro Tem. Dean.

The roll was called, a quorum being present, the following Senators answering to their names:

| | |
|---------------------|--------------------|
| Alderdice. | Hopkins. |
| Bailey. | Hudspeth. |
| Bee. | Johnson of Hall. |
| Buchanan of Bell. | Johnston of Harris |
| Buchanan of Scurry. | Lattimore. |
| Caldwell. | McCollum. |
| Clark. | McNealus. |
| Collins. | Page. |
| Dayton. | Parr. |
| Dean. | Robbins. |
| Dechierd. | Smith. |
| Floyd. | Strickland. |
| Gibson. | Suiter. |
| Hall. | Westbrook. |
| Harley. | Woodward. |
| Henderson. | |

Prayer by the Chaplain.

Pending the reading of the Jour-

nal of yesterday, the same was dispensed with on motion of Senator Alderdice.

Excused.

Senator McCollum, for yesterday, on account of important business, on motion of Senator Johnson of Hall.

Senators Dayton and Parr, for yesterday, on account of important business, on motion of Senator Gibson.

Petitions and Memorials.

See Appendix.

Committee Reports.

See Appendix.

Bills and Resolutions.

By Senator Dayton:

S. B. No. 28, A bill to be entitled "An Act providing for the assignment of able-bodied male persons between the ages of 19 and 50 years, inclusive, not regularly and continuously employed, to work in occupations carried on by the State, the counties of the State, the cities of the State, or by private employers, whenever, because of a state of war, the Governor determines such assignments to be necessary for the protection and welfare of the State, and find such occupations essential for the protection and welfare of the United States and this State, and that same can not be carried on as the State shall require without resort to this Act, no person to be assigned to any work he is not physically able to do; and providing for the procedure and means for rules and regulations for carrying this Act into effect, and for compensations to persons so assigned to work, and for penalties for non-compliance with this Act; and declaring an emergency."

Read first time and referred to Committee on Military Affairs.

By Senator Dean:

S. B. No. 29, A bill to be entitled "An Act to create a more efficient road system for Madison County or any political subdivision of said county by a vote of two-thirds ma-